

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 151

WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT.

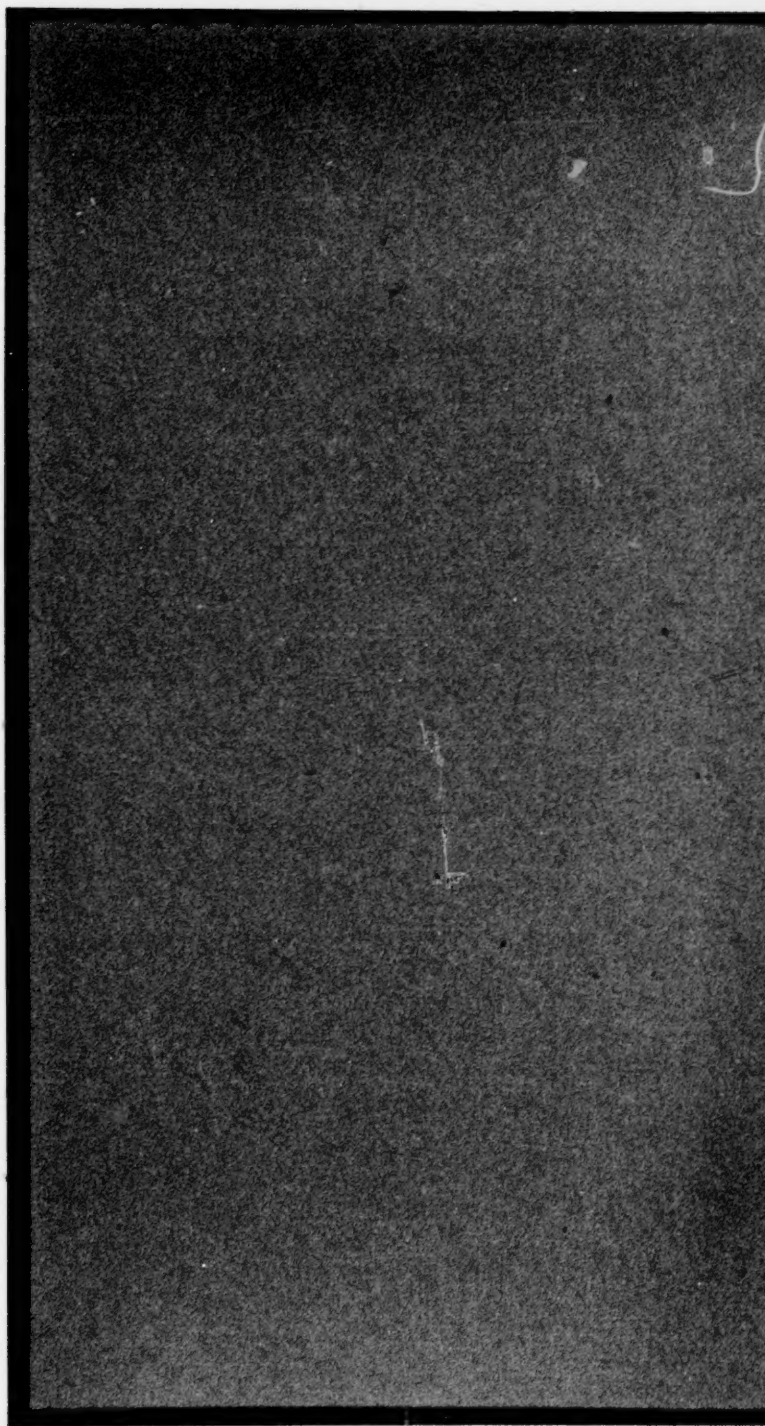


APPEAL FROM THE UNITED STATES.

FILED APRIL 19, 1915.

(23,644)✓





(23,644)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1069.

WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

v.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE FIFTH CIRCUIT.

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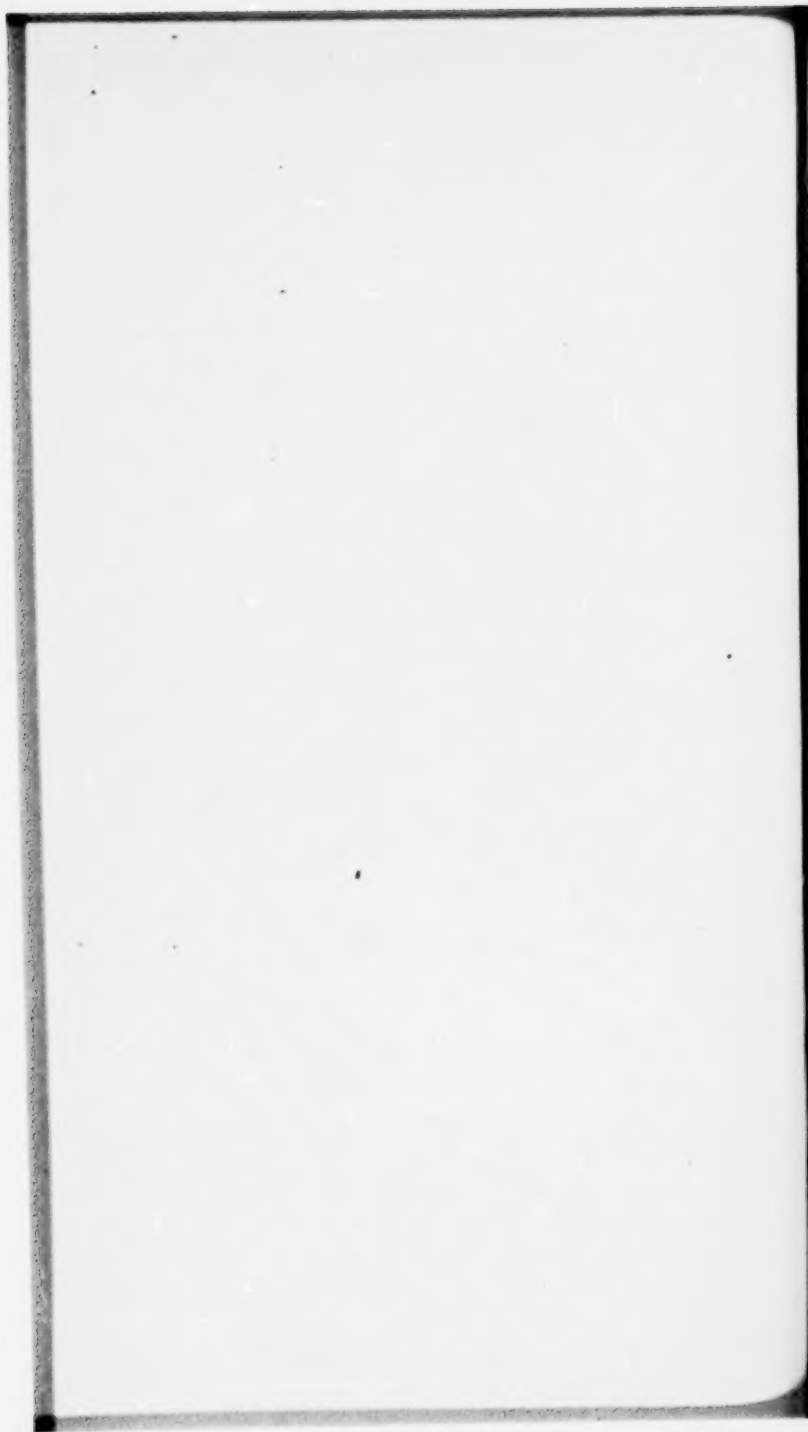
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UNITED STATES OF AMERICA.

United States Circuit Court of Appeals, Fifth Judicial Circuit.

PLEAS AND PROCEEDINGS had and done at a regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, before the Honorable Don A. Pardee, Circuit Judge, and the Honorable William T. Newman and the Honorable William I. Grubb, District Judges:

WRIGHT-BLODGETT COMPANY, LIMITED,

Appellant,

versus

THE UNITED STATES OF AMERICA,

Appellee.

BE IT REMEMBERED, that heretofore, to-wit, on the 3rd day of August, A. D. 1912, a Transcript of the Record of the above styled cause, pursuant to an Appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said Transcript was filed and Docketed in Said Circuit Court of Appeals as No. 2410, as Follows:



UNITED STATES DISTRICT COURT FOR THE WEST-  
ERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA

versus No. 382. In Equity.

J. J. HICKS, AND THE WRIGHT BLODGETT COM-  
PANY, LIMITED.

APPEALED FROM THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF LOU-  
ISIANA TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE FIFTH CIRCUIT.

TRANSCRIPT.

Hon. E. H. Randolph, United States Attorney,

Hon Lewell C. Butler, Asst. U. S. Attorney,

Solicitors for Complainant, Appellee.

Messrs. Hall, Monroe & Lemann,

Messrs. Mitchell & Young,

Solicitors for The Wright-Blodgett Company, Limited,

Defendant, Appellant.

4           IN THE CIRCUIT COURT OF THE UNITED  
STATES FOR THE FIFTH CIRCUIT AND  
WESTERN DISTRICT OF LOUISIANA.

THE UNITED STATES OF AMERICA, COMPLAINANT,

versus           No. 382. In Equity.

JOE J. HICKS, AND THE WRIGHT-BLODGETT COM-  
PANY, DEFENDANTS.

To the Honorable Judges of the United States Circuit Court  
for the Fifth Circuit and Western District of Louisiana—  
In Equity:

William H. Moody, attorney general of the United States, for and in behalf of the United States of America, files this bill of complaint against Joe J. Hicks, a citizen of and residing within the Parish of Vernon, State of Louisiana, and of the Western District thereof, and the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile and principal place of business at Saginaw, in the State of Michigan, defendants herein, and thereupon your orator complains and says:

First. That the defendant, Joe J. Hicks, on the 19th day of October, 1898, under and by virtue of the provisions of Sections 2289 and 2290 of the Revised Statutes of the United States, filed in the local land office of the United States at Natchitoches, Louisiana, his application No. 7382, to enter the following described lands: The northeast quarter of Section Eight, in Township number Two North, of Range number Five West, La. Mer., in the Natchitoches Land District, in Vernon Parish, Louisiana, containing one hundred and twenty-one & 64/100 acres.

Second. That at the time of the filing of his said application to enter said lands and premises, and contemporaneously therewith, the said defendant Joe J. Hicks, likewise filed in the said land office, as required by law, his affidavit and statement in writing under oath, in which, among other things, he stated and deposed that his said application to enter said lands as a

homestead was honestly and in good faith made for the purpose of actual settlement and cultivation, and that he would faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to said lands so applied for, and that he had

5 not and did not apply to enter the said lands for the purpose of speculation, but in good faith to acquire a home for himself. That thereupon, the said defendant, then and there, paid to the receiver of the said land office the sum of twenty-one & 10/100 dollars, being the amount of fees and compensation then and there due the register and receiver of said land office for the entry of said lands and the price of the excess in said lands over the area entered under said homestead act, and upon said payment having been made as aforesaid, receipts were then and there issued and delivered by the said receiver to the said defendant for the amounts so paid, and attached to and connected with one of said receipts a notation, setting forth in detail the requirements of the law to be observed and complied with by said defendant in order to obtain title to said lands so applied for to be entered by him, as follows, to-wit:

"It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the five years, he must file proof of his actual residence and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to time of payment."

Third. That thereupon, in order to entitle the said defendant to obtain and procure from the said United States a patent for said tract of land under the homestead laws of the United States, it was incumbent on said defendant and he was required to make actual settlement on said lands, and reside thereon and cultivate the same for a period of five years from and after the date of filing his said application and affidavit, hereinbefore



mentioned and referred to, or in case said defendant did not desire to remain on said lands the full period of five years, to make payment for said lands at the expiration of fourteen months from and after the filing of his said application and affidavit, upon making proof before the register and receiver of the said land office at Natchitoches, Louisiana, of settlement upon and cultivation of said lands by said defendant from the date of the filing of said application and affidavit down to the time of making such payment. That for the purpose of availing himself of the privilege afforded by the laws in such cases made and provided, to purchase the lands after the expiration of the fourteen months from and after the filing by him of his said application and affidavit, as aforesaid, the said defendant, Joe J. Hicks, on the 11th day of June, A. D. 1901, appeared before James M. Boyd, then and there a United States commissioner, at Leesville, in the Parish of Vernon, State of Louisiana, together with his witnesses M. C. Bass and W. J. Bass,

6      due notice having been given as required by law, and offered proof before the said James M. Boyd, United States commissioner as aforesaid, that he had settled upon the said lands and premises and actually resided thereon and cultivated the same as required by and within the meaning of the homestead laws of the United States, and then and there gave, made out and signed his deposition, and swore to the same before the said James M. Boyd, United States commissioner, as aforesaid, and soon thereafter, to-wit, on the 2nd day of July, A. D. 1901, filed and caused to be filed the said deposition and sworn statement in the said United States land office at Natchitoches, Louisiana, the said land office being then and there the proper United States land office of the land district wherein said lands are situated, and then and there offered, presented, delivered and filed the said deposition and sworn statement to and with the register and receiver of the said land office, as proof of the settlement and residence upon, and the cultivation of the said lands and premises by the said defendant as required by law, and the same was accepted and received by the said register and receiver of the said land office for the purpose for which they were offered.

Fourth. And your orator sheweth unto your Honors, that the said defendant in said deposition and sworn statement, made, signed and sworn to by him as aforesaid, and offered,

presented, delivered to and filed with the register and receiver, and accepted by them as proof of the settlement and residence of the said defendant upon said lands, and of the cultivation of the same by him, among other things, testified and deposed that he had established his actual residence upon said lands on the — day of March, 1899; that he had not been absent from said lands since establishing his residence thereon down to the time of making his said proof for more than four months at a time; that he had cleared about two acres of said lands, and raised two crops thereon; and that he had at the time of making his said proof put in improvements, consisting of a house and fruit trees, the value of one hundred dollars. That the said defendant procured from each of his said witnesses a like deposition and sworn statement, taken before the said James M. Boyd, United States commissioner as aforesaid, on the said 11th day of June, 1901, the same in effect, and corroborative and in aid of the said deposition and sworn statement, made, signed and sworn to by him, the said defendant, as aforesaid, and filed the same with defendants own deposition and sworn statement, in the said land office of the United

7 States at Natchitoches, Louisiana, as proof of the settlement and residence upon, and the cultivation of

said lands by said defendant as required by law, and all of said depositions, testimony and sworn statements of the defendant and his said witnesses, so made, signed and sworn to, as aforesaid, were, and each of them was, then and there, taken and accepted by the said register and receiver of the said land office as proof of the settlement and residence of the said defendant upon, and the cultivation by him of the said lands and premises. That thereupon, on the 6th day of July, 1901, the said defendant paid to the receiver of the said land office the sum of four hundred dollars, being payment for said lands at the rate of two and 50/100 dollars per acre for said lands, and thereupon, the said receiver, then and there, issued to said defendant his final receipt No. 21228, for the said moneys so paid to him by the said defendant in payment for said lands, and the register of said land office, likewise, then and there issued to said defendant his certificate No. 21228, certifying that in pursuance of law, the said defendant had purchased said lands, and that upon presentation of said certificate to the commissioner of the general land office, the said defendant should be entitled to receive a patent for the tract of land hereinbe-

fore more particularly described and set forth. That thereafter, such proceedings were had, that on the 1st day of April, 1902, a patent was issued to said defendant for said lands, which said patent was duly delivered to said defendant and received by him.

Fifth. And your orator further sheweth unto your Honors, that the said acceptance of the said deposition and testimony of the said defendant and of his said witnesses as proof of the settlement and residence of the said defendant upon said lands, and the cultivation of the same by him, as required by law, by the said register and receiver, and the issuance of the said final receipt, and the issuance of the said certificate of purchase, as hereinbefore set forth, and the issuance of the said patent for the said tract of land by the United States, were done by the said officers of the said land office, and the officers of your orator, the United States, in reliance by them, and each of them, upon the truth of the testimony and statements contained in the depositions of his said witnesses, and in reliance upon the good faith of the said defendant and his said witnesses, and not otherwise.

8 Sixth. And your orator avers, that the said deposition of the said defendant, and the depositions of his said witnesses, were, and each of them was, then and there, false and fraudulent, as was then and there well known to the said defendant and each of his said witnesses, and made with the intent to deceive the officer of the United States, and with the intent to fraudulently obtain a patent to the said lands, and by fraud and deceit to procure a patent for the said lands, by means of the false and fraudulent testimony and statements contained in said deposition and testimony, in this, to-wit: That the said defendant did not establish his actual residence upon said lands, or any part or portion thereof, on the — day of March, A. D. 1899, or at any time or at all; that he had been absent from said lands for more than four months at a time since the — day of March, 1899, and had not resided upon said lands for any period of time, or at all; that he had not cleared about two acres of said lands, or any other amount of said lands; that he had not cultivated about two acres of said lands, or any part thereof, for two seasons, or at all; that he had not at the time of making his said proof, as aforesaid, put

improvements on said lands, consisting of a house and fruit trees, or the value of one hundred dollars, or put improvements thereon of any value at all. But your orator alleges the fact to be that the defendant never did make a settlement on said lands, or any part thereof, and never did establish his residence on said lands, or any part thereof; and never cultivated about two acres of said lands, or any part thereof, for two seasons, or at all; and never put any improvements on said lands, consisting of a house and fruit trees, of the value of one hundred dollars, or of any character or value at all, and each and every of the statements so made by the said defendant and his said witnesses, as herein before specifically mentioned and set forth, which are contained in said depositions and testimony to prove settlement and residence of said defendant on said lands, and the cultivation of the same by him, as required by the homestead laws of the United States, are utterly false, fraudulent and untrue in every particular as he, the said defendant, then and there well knew.

Seventh. And your orator charges and alleges that the said testimony of the said defendant and the testimony of his said witnesses, contained in said depositions made by them, and each of them, as aforesaid, was false, fraudulent and untrue in the respects and in the several particulars as hereinbefore set forth; and the same was made, offered and filed as proof of the settlement and residence of said defendant upon said lands, and the cultivation of the same, as aforesaid, for the false and fraudulent purpose of imposing upon and deceiving the register and receiver of the said United States land office at Natchitoches, Louisiana, and to cause and induce the said officers and agents of your orator to believe that the statement and testimony contained in the said depositions were true, and that the said defendant had in fact made and established a settlement and resided upon said tract of land, and had cultivated the same, as by law required, and for the purpose of obtaining by means of fraud and deceit the issuance to said defendant a patent for the said lands hereinbefore described.

And your orator further sheweth unto your Honors that the said defendant, Joe J. Hicks, by means of said false and fraudulent depositions, and the false and fraudulent statements and testimony contained therein, given under the sanction of an

ulent methods the issuance of said patent, and your orator avers and charges that the said Wright-Blodgett Company, so well knowing and being advised of said false and fraudulent acts and doings on the part of the said defendant, Joe J. Hicks, and his said witnesses, did, through its officers, whose names are to your orator unknown, and therefore not herein given and set forth, aid, assist, advise and encourage the commission of each and every of said acts and things, with the fraudulent purpose of obtaining title to said lands hereinbefore described. For these reasons your orator avers that the said act of sale as hereinbefore set forth from the said defendant, Joe J. Hicks, to the said Wright-Blodgett Company, should be canceled, annulled, set aside and held for naught by the decree of your Honors, as contrary to equity and good conscience, and to the manifest injury of your orator.

For as much as your orator can have no adequate relief except in this Court, and to this end, that the defendants, and each of them, may, if he can, show why your orator should not have the relief hereby prayed, and make a full disclosure and discovery of the matters aforesaid, and according to the best of his knowledge, remembrance, information and belief, true, direct and perfect answer make, each of them, to the matters herein stated and charged, but not under oath, an answer under oath being hereby expressly waived.

And your orator prays that a decree be rendered by this Court, declaring null and void the said patent to the said defendant, Joe J. Hicks, for said lands and premises, and requiring, directing and compelling the said defendant, Joe J. Hicks, to surrender and deliver up, and return the said patent to your

12 orator, and that he be forever and perpetually restrained and enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said patent; and your orator prays that the act of sale from the defendant, Joe J. Hicks, to the said Wright-Blodgett Company be declared null and void and of no effect; and that the said Wright-Blodgett Company be forever and perpetually restrained and enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said act of sale; and that the said defendants, and each of them, be held to pay into the treasury of your orator all such reasonable sums of money as it may be found necessary to lay out and expend in and about discovering the fraud, so as



hereinbefore set forth and charged, and that your orator may have all such further relief in the premises as may be conformable to equity and good conscience, and as such may seem proper to this Honorable Court.

May it please your Honors to grant unto your orator a writ of subpoena of the United States of America, issued out of and under the seal of this Court, directed to the said defendant, Joe J. Hicks, and to the said Wright-Blodgett Company, through its proper officers, and each of them, on a day certain to appear and answer to this bill of complaint, and to abide and perform such order and decree in the premises as the Court shall deem proper and required by the principles of equity and good conscience.

WILLIAM H. MOODY,

Attorney General of the United States.

MILTON C. ELSTNER,

U. S. Attorney, Western District, Louisiana.

United States of America,

Western District of Louisiana.

Milton C. Elstner, being duly sworn, deposes and says: That he is the regularly appointed, qualified and acting United States Attorney for the Western District of Louisiana; that he has read the foregoing bill of complaint, and that the matters and facts therein stated and alleged are true to the best of his knowledge, information and belief.

MILTON C. ELSTNER.

Subscribed and sworn to before me this 3rd day of December, A. D. 1906.

W JACKSON,

Clerk of the United States Circuit Court, Fifth  
Circuit and Western District of Louisiana.

Indorsed: No. 382. United States Circuit Court. United States vs. Joe J. Hicks, et al. Bill of complaint. Filed Dec. 3rd, 1906. W. Jackson, Clerk.

13

United States of America,

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States.

To the Marshal for the Western District of Louisiana—  
Greeting:

You are hereby commanded to summon Joe J. Hicks, a citizen of and residing in the Parish of Vernon, State of Louisiana, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the third Monday of May, 1907, then and there to answer a bill in chancery, filed against him, wherein the United States is complainant, and Joe J. Hicks, and the Wright-Blodgett Company are defendants.

Herein, fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 3rd day of December, in the year of our Lord one thousand nine hundred and six, and the 130 year of American independence.

[Seal]

W. JACKSON, Clerk.

The defendant Joe J. Hicks is hereby notified that he is required to enter his appearance in the Clerk's Office of the United States Circuit Court, at Lake Charles, La., on or before the 1st Monday of January, 1907, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 382. United States vs. Joe J. Hicks, et al. Subpoena in chancery.

Marshal's Return.

Marshal's Docket No. 480, Dec. 4, 1906.  
Received Dec. 4, 1906, and served by delivering, in person,

a certified copy hereof to the within named Joe J. Hicks, at  
Leesville, La., Dec. 7, 1906.

A. C. LEA,  
U. S. Marshal.  
By B. INGOUF, Deputy.

Filed Dec. 12th, 1906.

W. JACKSON, Clerk.

14

United States of America,

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States

To the Marshal for the Western District of Louisiana,  
Greeting:

You are hereby commanded to summon the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile at Saginaw, Michigan, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the Third Monday of May, 1907, then and there to answer a bill in chancery, filed against it, wherein the United States is complainant, and Joe J. Hicks, and the Wright-Blodgett Company are defendants.

Herein, fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 3rd day of December, in the year of our Lord one thousand nine hundred and six, and the 130 year of American independence.

[Seal]

W. JACKSON, Clerk.

The defendant, Wright-Blodgett Co., is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States Circuit Court, at Lake Charles, La., on or

before the 1st Monday of January, 1907, otherwise the bill may be taken pro confessor.

W. JACKSON, Clerk.

Indorsed: United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 382. United States vs. Joe J. Hicks, et al. Subpoena in chancery.

Marshal's Return.

Marshal's Docket No. 480, Dec. 4, 1906.

Received Dec. 4, 1906, and served by delivering a certified copy hereof to Mitchell & Young, Attys. for Wright-Blodgett Co., at Lake Charles, La., Dec. 6, 1906, in person.

A. C. LEA,

U. S. Marshal.

By B. INGOUF, Deputy.

Filed Dec. 12th, 1906.

W. JACKSON, Clerk.

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15 In the Circuit Court of the United States for the Western District of Louisiana.

United States,

vs.

No. 382. In equity

Joe J. Hicks, et al.

Now comes Wright-Blodgett Company, Limited, herein made defendant as Wright-Blodgett Company, in the above entitled proceedings, and, through undersigned counsel, enters its appearance herein as required by the rules of equity practice.

MITCHELL & YOUNG,

Attys. for Defendant.

Indorsed: No. 282. In the Circuit Court of the United States for the Western District of Louisiana. United States vs. Joe J. Hicks, et al. Appearance of Wright-Blodgett Co. Filed Dec. 17, 1906. W. E. Cline, Dy Clerk.

16 In the Circuit Court of the United States for the  
Fifth Circuit and Western District of Louisiana.

The United States of America, Complainant,  
vs. No. 382. In equity  
Joe J. Hicks, and Wright-Blodgett Company, Limited,  
Defendants.

The answer of the Wright-Blodgett Company, Limited, one of the defendants to the bill of complaint of the United States of America, plaintiff, sayeth:

1. That the matters and things set forth in the first, second, third, fourth and fifth articles of the bill of complaint are true.

2. That if the matters and things set forth in the sixth and seventh articles of the bill of complaint be true, and if the depositions of Joe J. Hicks and his witnesses were false and fraudulent, and made with the purpose to deceive, as alleged, said falsity and fraud and purpose to deceive were and are absolutely beyond the knowledge of this defendant, who equally with the officers and agents of the United States, credited and believed said acts and depositions and acted upon the faith thereof in good faith.

3. That the matters and things set forth in the eighth article of the bill of complaint are true to this extent, that the patent issued as alleged to Joe J. Hicks, did entitle the said defendant to exercise the right of absolute ownership of and over the said lands heretofore mentioned and described, and assert a title to same. That said defendant did so assert a title thereto, and did transfer the said title to respondent, who acquired same in good faith for adequate consideration, without notice either actual or constructive. That if said title was acquired by fraud, respondent had no knowledge of the same, nor had it reason to suspect such fraud.

4. That the matters and things set forth in the ninth article of the bill of complaint are untrue in this: That it is true that Joe J. Hicks transferred the said lands to respondent on July 10, 1901, but that it is untrue that was then without real or apparent title thereto, the fact being that at that  
17 time the right to a patent had become vested in said



Hicks, so that he held the full equitable title and the equivalent of the full apparent and legal title, and that the subsequent issuance of the patent was a mere ministerial act, which, however, inured to respondent's benefit.

Defendant especially denies that Nat Wasey or James M. Boyd, or either of them, have been or are its agents, entrusted with the investigation, solicitation and purchase of lands for its use and benefit; that it, through them or otherwise, knew of the alleged fraudulent acts, and statements set forth in the bill of complaint, and it emphatically and especially denies that it did through its officers or otherwise, aid, assist, advise, and encourage the commission of the alleged fraudulent acts or have knowledge of or suspect any fraud therein, but respondent avers that, as alleged in the bill of complaint, its domicile is now in Saginaw, Mich., that it dealt with Hicks in the premises in good faith and at arm's length; that he held what they believed and were advised was a good title to the lands, which title they acquired in good faith, for a valuable consideration.

Respondent especially denies that it entered into or had any knowledge of any conspiracy against the United States in regard to said land, and specifically sets forth that until the service of process upon it in this suit, it had no knowledge of and no reason to suspect the claims herein urged.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged without this that there is any other matter, cause or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied as true to the knowledge and belief of this defendant. All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WRIGHT-BLODGETT CO., LTD.  
MITCHELL & YOUNG,  
HALL & MONROE,

Solicitors for Defendant.

Indorsed: No. 382. United States vs. Joe J Hicks, et al.  
Answer of Wright-Blodgett Co., Ltd. Filed March 15, 1907.  
W. E. Cline, Dy. Clerk. Ent. Chancery Order Book, folio 356.

18 In the Circuit Court of the United States for the Fifth Circuit and Western District of Louisiana.

United States of America, Defendant,  
vs. No. 382. In equity  
Joe J. Hicks, and Wright-Blodgett Company, Defendants.

Whereas, the bill in equity in the above entitled cause was filed in this Court on the Third day of December, 1906, and a subpoena duly issued and served on me, in this because as required by law, and I do not desire to defend the said action; therefore, I hereby consent that the said bill in so far as it applies to me be taken pro confesso, and the complainant may attach this stipulation and confession to the said bill, and the same to be binding and conclusive on me, this defendant.

JOE J. HICKS.

Indorsed: No. 382. United States vs. Joe J. Hicks, and Wright-Blodgett Co. Consent pro confesso. J. J. Hicks. Filed Dec. 22, 1908. Leory B. Gulotta, Clerk. Noted in C. O. B., folio 490.

19 Circuit Court of United States, for the Fifth Circuit, Western District of Louisiana.

United States of America,  
vs. No. 382  
J. J. Hicks, and the Wright-Blodgett Company, Ltd.

Now comes the Wright-Blodgett Company, Ltd., co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

Wherefore, it now objects to the following testimony and evidence, and moves to strike out same:

1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

2. The bills having charged that the Wright-Blodgett Co.,

Ltd., had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals, on the ground of variance and irrelevancy, and asks that same be stricken out.

3. There is no allegation in the bills charging invalidity in the entries on the ground that the entryman sold or agreed to sell, prior to making final proofs; hence any attempt to show such a situation would be irrelevant and a variance, and is objected to as such, and motion made to strike same out.

4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock is objected to as irrelevant, and motion made to strike same out.

It appearing that there are filed herein certain letters passing between the department of government and the officials thereof, and certain reports of special agents, same are objected to by the Wright-Blodgett Co., Ltd., defendant, on the following grounds:

1. As not the best evidence and hearsay.
2. As unsworn statements of persons not called as witnesses.
3. As *res inter alios acta*, irrelevant and immaterial.

HALL & MONROE.

MITCHELL & YOUNG.

Indorsed: No. 382. U. S. Circuit Court, Fifth Circuit, Western District of Louisiana. United States of America vs. J. J. Hicks and the Wright-Blodgett Co., Ltd. Motion. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk.

## United States of America.

vs.

No. 382

J. J. Hicks, and the Wright-Blodgett Co., Ltd.

In the above numbered and entitled cause, the following agreement is entered into between M. C. Elstner, United States Attorney, and J. Blane Monroe, attorney for the Wright-Bloodgett Co., Ltd.:

It is hereby agreed between the parties to this case that at the Lake Charles term of the United States Circuit Court for the Western District of Louisiana, beginning December 21st, 1909, or thereabouts, all the testimony, evidence and documents heretofore offered by both sides shall be filed in Court, subject to objections made and to be made to same, at Alexandria, and the cases are to be continued for argument to the Alexandria term of the Court. This agreement to be filed in the record. Cases to be continued if Monroe in Washington or for other legal cause.

Dec. 20, 1969.

M. C. ELSTNER.

U. S. Attorney,

J. BLANC MONROE

Indorsed: No. 382. In equity. U. S. Circuit Court for Fifth Circuit and Western District of Louisiana. United States vs. J. J. Hicks, and the Wright Blodgett Company, Ltd., (Agreement between U. S. Attorney and Mr. J. Blanc Monroe, Atty. for the Wright-Blodgett Company, Ltd. Filed at Lake Charles, La., December 22nd, 1909. Leroy B. Gulotta, Clerk.

## U. S. Circuit Court.

United States of America,

vs.

No. 382. In equity

J. J. Hicks and Wright-Blodgett Co.

It appearing to the Court that the bill of complaint in this cause was duly filed in this Court on the 3rd day of December, 1906, and that a subpoena was duly issued and served upon J. J. Hicks, one of the defendants herein; and it appearing further that the said J. J. Hicks, on the 23rd day of December, 1908, made his appearance in this Court, and entered and caused to be filed herein his written consent that the bill of complaint be taken pro confesso as to him, and that a decree be signed cancelling and annulling the patent mentioned in said bill to the lands granted by the United States of America to him to the lands mentioned and described therein; therefore, by reason of said consent, and by reason of the law and the evidence being in favor thereof, It is ordered, adjudged and decreed that the patent issued by the United States of America to the said J. J. Hicks for the following described lands, to-wit: The northeast quarter of Section eight, in Township two north of Range five west, Louisiana Meridian, be, and the same hereby is cancelled and annulled and declared of no force and effect.

It is further ordered that this defendant, J. J. Hicks, pay all costs of this proceeding.

This decree is rendered without prejudice to any rights that may be in the Wright-Blodgett Company, one of the defendants herein.

Thus done, read and signed in open court this 22nd day of December, 1909.

ALECK BOARMAN,

U. S. Judge.

Indorsed: No. 382. U. S. Circuit Court. United States vs. J. J. Hicks, and Wright-Blodgett Company. Decree as to J. J. Hicks. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 2, folio 174.

22 United States Circuit Court, Fifth Circuit, Western  
District of Louisiana.

United States,  
vs. No. 382. In equity  
J. J. Hicks, and the Wright-Blodgett Company.

Pursuant to reservation of right, made at the time of the taking of the testimony, and the agreement between Milton C. Elstner, and J. Blanc Monroe, on December 22nd, 1909, the Wright-Blodgett Company makes to the testimony offered by complainant, the following objection:

1. It reiterates here every objection noted by it on the stenographer's notes.

2. It objects to any attempt to show knowledge in it other than through the persons and in the manner specified in the bill, on the ground that same is irrelevant, and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this case. 172 Fed. 950. Last ten lines.

3. It objects to the introduction of any evidence, of whatsoever nature herein on the ground that indispensable parties and parties proper to be present are not before the Court.

4. It objects to the entire testimony and documentary evidence of the United States as irrelevant. *Res inter alia acta* hearsay, and not the best evidence.

5. It objects to any attempt to show an agreement by the Wright-Blodgett Company to purchase these lands prior to final receipt on the ground that no such attack is made in the bills and the testimony is irrelevant, and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this Court.

Indorsed: No. 382. In equity. United States Circuit Court, Fifth Judicial Circuit, Western District of Louisiana. United States vs. J. J. Hicks, and Wright-Blodgett Company. Exception filed by Wright-Blodgett Company to certain testimony. Filed Feb. 25, 1910. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.

23 In the District Court of the United States for the  
Western District of Louisiana, Fifth Circuit of  
the United States.

United States of America,  
vs. No. 382. In equity  
J. J. Hicks, and Wright-Blodgett Company.

This case came on for hearing this — day of May, 1912, before the Honorable Aleck Boorman, Judge presiding, and was heard upon the bill, answers, exhibits, proofs in the case and arguments of counsel, and thereupon, upon consideration thereof, and by virtue of the law and the evidence being in favor thereof; it was ordered, adjudged and decreed as follows:

It is ordered, adjudged and decreed, That the patent described in the bill issued to defendant, J. J. Hicks, on the 1st day of April, in the year 1902, for Northeast Quarter (N. E. 1/4) of Section Eight (8), Township Two (2), North Range Five (5) West, La., Mer., containing 121.64 acres, situated in the State of Louisiana; be, and the same is, hereby declared to be null and void for the said lands and premises described in the bill, as aforesaid, and the defendants, J. J. Hicks and Wright-Blodgett Company, be, and are hereby, required and directed to surrender and deliver and return said patent to the United States of America; and it is further adjudged and decreed that they be forever restrained and enjoined from ever claiming or asserting any right, benefit, privilege or advantage whatsoever under said patent. It is further ordered, adjudged and decreed, That the defendant pay the costs of this proceeding.

Done, read and signed in open court at Alexandria, Louisiana, on this 6th day of May, 1912.

ALECK BOARMAN,  
U. S. Judge.

Indorsed: No. 382. United States District Court, Western District of Louisiana. United States vs. J. J. Hicks, and Wright-Blodgett Company. Judgment. Filed May 6, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

The United States of America,

To all to whom these presents shall come—Greeting:

Certificate No. 21228.

Whereas, Joe J. Hicks, of Vernon Parish, Louisiana, has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Natchitoches, Louisiana, whereby it appears that full payment has been made by the said Joe J. Hicks, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An act making further provision for the sale of the public lands," and the acts supplemental thereto for the Northeast quarter of Section Eight, in Township Two North of Range Five West of Louisiana Meridian in Louisiana, containing one hundred and sixty-one acres and twenty-four hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Joe J. Hicks,

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Joe J. Hicks, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging unto the said Joe J. Hicks and to his heirs and assigns forever.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the First day of April, in the year of our Lord one thousand nine hun-



dred and two, and of the independence of the United States the one hundred and twenty-sixth.

[Seal]

By the President:

T. ROOSEVELT.

By F. M. McKEAN,

Secretary.

C. H. BURTH,

Recorder of the General Land Office.

Recorded Louisiana, Vol. 127, page 285.

25 Indorsed: No. 21228. Entered. Joe J. Hicks.  
Patent Filed 11 day of April, 1902, and recorded in  
Vol. No. 1, page 424, Patent Record, Vernon Parish. [Seal]  
J. J. Hicks, Clerk. By . . . . . Deputy. Filed Mar. 1st,  
1909. J. F. Slattery, M. in Ch.

26 State of Louisiana.  
Parish of Vernon.

Know all men by these presents: That I, Joseph J. Hicks, (a married man whose wife is now living) of the Parish of Vernon, State of Louisiana, for and in consideration of the sum of \$800.00, Eight Hundred Dollars, to me in hand paid by Wright-Blodgett Company, Limited, a firm or corporation organized and existing under the laws of the State of Michigan, and domiciled at Saginaw, Michigan, have granted, sold and delivered, and by these presents do grant, sell and deliver, with full subrogation to all of my rights and actions of warranty against all former owners and vendors unto the said Wright-Blodgett Company, Limited, of the City of Saginaw, and State of Michigan, all that certain lot or parcel of land situated and being in the Parish of Vernon and State of Louisiana, and being known and described as follows, to-wit: The Northeast quarter (N. E. 1/4) of Section Eight, in Township Two (2), North of Range Five (5) West, La. Mer., and containing in all the sum of one hundred and sixty-one and twenty-four hundredths (161.24/100) acres, be the same more or less, according to the government survey thereof.

To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Wright-Blodgett Company,

Limited, its successors and assigns forever, and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Wright-Blodgett Company, Limited, its successors and assigns against any person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand at Leesville, Louisiana, in the presence of H. L. Sanders, Jr., and B. F. Koonce, lawful witnesses, on this 10th day of July Anno Domini, one thousand nine hundred and one. (1901.)

JOSEPH J. HICKS.

Attest:

B. F. KOONCE.

H. L. SANDERS, JR.

27 State of Louisiana,  
Parish of Vernon.

Before me, W. A. Winfree, Dy. Clerk & Ex-Officio, a duly qualified notary public, in and for said parish and State, on this day personally appeared Joseph J. Hicks, to me personally known to be the identical person whose name is subscribed to the foregoing instrument, and acknowledged to me in the presence of H. L. Sanders, Jr., and B. F. Koonce, witnesses, that he executed the same on the day of the date thereof, and that it was his own free and voluntary act, for the uses and purposes therein expressed.

Witness my official signature and seal at Leesville, La., on this 10th day of July, A. D. 1901.

W. A. WINFREE,

Dy. Clerk & Ex Officio Notary Public.

Attest:

B. F. KOONCE,

H. L. SANDERS, JR.

Filed for record July 17th, 1901. Recorded July 31st, 1901.

W. A. WINFREE,

Dy. Clerk & Ex-Officio Recorder.

State of Louisiana,  
Parish of Vernon.

I hereby certify that the above and foregoing is a true and correct copy as the same appears on record in my office in the

Town of Leesville, said Parish and State, in Conveyance Book "S," at folio 545 & 546.

In testimony whereof, I have hereunto set my hand and affixed my official seal of office on this the 23rd day of February, A. D. 1909.

[Seal]

A. G. WINFREE,

Clerk 12th District Court, Vernon Parish, Louisiana.

Indorsed: Joe J. Hicks to Wright-Blodgett Co. U. S. vs. J. J. Hicks, et al. Ex. "A"-382. Filed Feb. 25, 1909. J. F. Slattery, M. in C.

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28 Abstract of Title to Wright-Blodgett Company, Limited from the Notarial and Abstract Office of J. J. Hicks, Leesville, La.

United States

vs.

No. 382

J. J. Hicks, et al.

Southwest quarter of northeast quarter (excepting 7 acres out of the northwest corner of the said 40) of Section 34, Township 3 North, Range 5 west; south half of southwest quarter of Section 14, Township 2 North, Range 5 West; northeast quarter of Section 8, Township 2 North, Range 5 West; southeast quarter of Section 8, Township 2 North, Range 5 West; east half of southeast quarter of southwest quarter of Section 17, Township 2 South, Range 6 West, in Vernon Parish, Louisiana.

29 C. J. Greene, Receiver, Vendor.

John F. Lowe, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, May 25 1901.

Date of ackn'ment, May 25 1901

No. of witnesses, ———.

Officer before whom authenticated, C. J. Greene, Receiver.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book No. 1, page 240.

Consideration, \$1.89.

### Part of Section.

S. W. 1/4 of N. E. 1/4, Sec. 34, Twp. South 3 N., Range  
West 5 W. No. of acres 37.90.

John F. Lowe, Vendor.

Wright-Blodgett Co., Ltd., Vendee.

Instrument, Wty Deed.

Month. Day. Year.

Date of instrument, June 21 1901.

Date of ackn'ment, June 21 1901.

No. of witnesses, 2.

Officer before whom authenticated, Jerome H. Jackson,  
N. P.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book S, page 544.

Consideration, \$100.00.

### Part of Section.

S. W. 1/4 of N. E. 1/4, excepting seven acres out of the  
N. W. corner of said forty, Sec. 34, Twp. South 3 N., Range  
West 5 W. No. of acres, —.

Witnesses to signature of John F. Lowe:

NAT WASEY.

JAMES M. BOYD.

C. J. Greene, Receiver, Vendor.

Elijah Z. Boyd, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, May 24 1901.

Date of ackn'ment, May 24 1901.

No. of witnesses, —.

Officer before whom authenticated, C. J. Greene, Receiver.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book No. 1, page 239.

Consideration, \$203.13.

Part of Section.

S. 1/2 of S. W. 1/4, Sec. 14, Twp. South 2 N., Range West  
5 W. No. of acres, 81.25.

30

Elijah Z. Boyd, Vendor.

Wright Blodgett Company, Ltd., Vendee.

Instrument, Wty Deed.

Month. Day. Year.

Date of instrument, June 21 1901.

Date of ackn'ment, June 21 1901.

No. of witnesses, 2.

Officer before whom authenticated, Jerome H. Jackson,  
N. P.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book S, page 248.

Consideration, \$324.00.

Part of Section.

S. 1/2 of S. W. 1/4, Sec. 14, Twp. South 2 N., Range West  
5 W. No. of acres, 81, more or less.

Witnesses to signature of Elijah Z. Boyd:

J. M. BOYD.

NAT WASEY.

C. J. Greene, Receiver, Vendor.

Joe J. Hicks, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, July 6 1901.

Date of ackn'ment, July 6 1901.

No. of witnesses, —.

Officer before whom authenticated, C. J. Greene, Receiver.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book No. —, page 240.

Consideration, \$400.

Part of Section.

N. E. 1/4, Sec. 8, Twp. South 2 N., Range West 5 W. No.  
of acres, 161.24.

Joseph J. Hicks, Vendor.

Wright-Blodgett Company, Ltd., Vendee.

Instrument, Wty Deed.

Month. Day. Year.

Date of instrument, July 10 1901.

Date of ackn'ment, July 10 1901.

No. of witnesses, 2.

Officer before whom authenticated, W. A. Winfree, Dy.  
Clerk, &c.

Month. Day. Year.

When filed, July 17, 1901.

Where recorded, Book S, page 545.

Consideration, \$800.00.

Part of Section.

N. E. 1/4, Sec. 8, Twp. South 2 N., Range West 5 W. No.  
of acres 161.24.

Witnesses to signature of Joseph J. Hicks:

B. F. KOONCE.

H. S. SANDERS, JR.

31 C. J. Greene, Receiver, Vendor.

Walter O. Allen, Vendee.

Instrument, final receipt.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | July   | 8    | 1901. |
| Date of ackn'ment,  | July   | 8    | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, C. J. Greene, Receiver.

|                 | Month.                | Day. | Year. |
|-----------------|-----------------------|------|-------|
| When filed,     | July                  | 17   | 1901. |
| Where recorded, | Book No. 1, page 239. |      |       |
| Consideration,  | \$400.00.             |      |       |

Part of Section.

S. E. 1/4, Sec. 8, Twp. South 2 N., Range West 5 W. No.  
of acres 161.25.

Walter O. Allen, Vendor.

Wright-Blodgett Company, Ltd., Vendee.

Instrument, Wty Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | July   | 10   | 1901. |
| Date of ackn'ment,  | July   | 10   | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, W. A. Winfree, Dy.  
Clerk &c.

|                 | Month.            | Day. | Year. |
|-----------------|-------------------|------|-------|
| When filed,     | July              | 17   | 1901. |
| Where recorded, | Book S, page 546. |      |       |
| Consideration,  | \$800.00.         |      |       |

Part of Section.

S. E. 1/4, Sec. 8, Twp. South 2 N. Range West 5 W. No.  
of acres, 161.25.

Witnesses to signature of Walter O. Allen:

B. F. KOONCE.  
H. L. SANDERS, JR.

Charles P. Johnston, Receiver, Vendor.

James M. Weldon, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, Dec. 4 1900.

Date of ackn'ment, Dec. 4 1900.

No. of witnesses, —.

Officer before whom authenticated, Charles P. Johnston, Receiver.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book No. 1, page 43.

Consideration, \$3.00.

Part of Section.

S. E. 1/4 of S. W. 1/4, together with other lands, Sec. 17, Twp. South 2 S., Range West 6 W. No of acres, 40, more or less.

32

James M. Weldon, Vendor.

Wright-Blodgett Company, Ltd., Vendee.

Instrument, Warranty Deed.

Month. Day. Year.

Date of instrument, June 21 1901.

Date of ackn'ment, June 21 1901.

No. of witnesses, 2.

Month. Day. Year.

When filed, July 17 1901.

Officer before whom authenticated, Jerome H. Jackson, N. P.

Where recorded, Book S, page 549.

Consideration, \$50.

Part of Section.

E. 1/2 of S. E. 1/4 of S. W. 1/4, Sec. 17, Twp. South 2 S., Range West 6 W. No of acres, 20, more or less.

Witnesses to signature of James M. Weldon:

NAT WASEY.

JAMES M. BOYD.



State of Louisiana,  
Parish of Vernon.

Office of Clerk of the 12th Judicial District Court and Ex Officio Recorder in and for parish and State aforesaid. I do hereby certify that I have carefully examined the foregoing abstract of title to Wright-Blodgett Company, Limited; and there are no mortgages, liens nor incumbrances of record against the property above described: I further certify that there are no judgments against nor suits pending either against the property above described or parties mentioned above. I further certify that the property above described is duly recorded in the records of Vernon Parish and properly indexed.

Given under my hand and seal of office at Leesville, La., August 5, 1901.

[Seal]

W. A. WINFREE,

Dy Clerk & Ex Officio Recorder.

Indorsed: No. 382. United States vs. J. J. Hicks, et al. Abstract of title to Wright-Blodgett Company, Limited, from the Notarial and Abstract Office of J. J. Hicks, Leesville, La. Filed in Ev. May 1st, 09. J. F. Slattery, Min. C.

33 Law Office of  
Pujo & Moss,  
First National Bank Building,  
Ryan Street.

Arsene P. Pujo  
Clement D. Moss.

Lake Charles, La., December 23rd, 1901.

We hereby certify that we have carefully examined the foregoing abstract of title to the South West quarter of North East quarter (excepting 7 acres out of the North West corner of the said 40) of Section 34, Township 3 North, Range 5 West; South half of South West quarter of Section 14, Township 2 North, Range 5 West; northeast quarter of Section 8, Township 2 North, Range 5 West; South East quarter of Section 8, Township 2 North, Range 5 West; East half of South East quarter of South West quarter of Section 17, Township 2 South, Range 6 West, in Vernon Parish, Louisiana, standing of record in the name of the Wright-Blodgett Company, Limited, and it is our opinion that the title thereto is good and valid and that said property is legally vested in said company at this date.

Respectfully submitted,

PUJO & MOSS.

34            06-139637  
P/N.

W. H. C.

A. R.  
J. O. C.

Department of the Interior,

General Land Office,

Washington, D. C., September 29, 1906.

I, W. A. Richards, Commissioner of the General Land Office, do hereby certify that the annexed copies, pages 1 to 33 inclusive, papers in C. C. Entry No. 21228, of Joe J. Hicks, Natchitoches, La., land district, together with report of Special Agent Clayton G. Coleman, August 23, 1906, are true and literal exemplifications of the originals in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal]

W. A. RICHARDS,

Commissioner of the General Land Office.

35            Application No. 7382.

Homestead.

Department of the Interior,  
United States Clerk's Land Office,

Leesville, La., Sept. 21, 1898.

I, Joe J. Hicks, of Leesville, P. O., Vernon Parish, La., do hereby apply to enter, under Section 22892289, Revised Statutes of the United States, the N. E. 1/4 of Section 8, in Township 2 North of Range 5 West, containing 161.24 acres.

JOE J. HICKS.

United States Land Office,

Natchitoches, La., Oct. 19, 1898.

I, Edw'd Phillips, Register of the Land Office, do hereby certify that the above application is for surveyed lands of the class which applicant is legally entitled to enter under Section

2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same. \$2.50.

EDWARD PHILLIPS, Register.

Indorsed: No. 7382. Homestead application. Joe J. Hicks, Natchitoches, La., Oct. 19, 1898. Sec. 8, Township 2 N., Range 5 W. 4/128.

36

Homestead Affidavit.

Clerk's Office,

Leesville, La., Sept. 21st, 1898.

I, Joe J. Hicks, of Leesville, La., having filed my application No. —, for an entry under Section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am a native born citizen of the United States, am the head of a family, and that by reason of the distance and expense of the trip, I am unable to appear at the District Land Office; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for; that I am not acting as agent for any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which I might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, .....

..... and that I have not heretofore made any entry under the homestead laws, .....

(Sign plainly with full Christian name.)

JOE J. HICKS.

Sworn to and subscribed before me this 21st day of September, 1898, at my office at Leesville, in Vernon County, Louisiana.

[Seal]

Z. T. CRAFT,  
Clerk Dist. Court.

\*Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family, or is over twenty-one years of age, as the case may be. It should be stated whether applicant is native born or not, and if not, a certified copy of his certificate of naturalization, or declaration of intention, as the case may be, must be furnished. (See page 45, circular of January 1, 1899.)

37

Receiver's Receipt, No. 7382.

Application No. 7382.

Homestead.

Department of the Interior.

Receiver's Office, Natchitoches, La.,

Oct. 19th, 1898.

Received of Joe J. Hicks the sum of eighteen dollars, No cents; being the amount of fee and compensation of Register and Receiver for the entry of Northeast 1/4 of Section Eight, in Township Two N. of Range Five W., La. Mer., under Section No. 2290, Revised Statutes of the United States.

.....

\$18.00.

Receiver.

38

## Homestead—Act of May 20, 1862.

(Revised Statutes of the United States, Section 2357.)

Excess. Receiver's Receipt, No. 20667.

Receiver's Office, Natchitoches, La.,  
Oct. 19th, 1898.

Received of Joe J. Hicks the sum of Three dollars, Ten cents, being in full for one acre and twenty-four hundredths of N. E. 1/4, Section No. 8, in Township No. 2 N. of Range No. 5 W., La. Mer., being excess in said tract over the area entered under the Homestead Act, per application and receipt No. 7382.

\$3.10.

J. S. DIXON, Receiver.

Indorsed: No. 20667. Excess receipt. Land Office at Natchitoches, La., October 19, 1898. Joe J. Hicks. Homestead application. No. 7382.

39

## No. 1. Homestead.

Land Office at Natchitoches, La.,  
April 26, 1901.

I, Joe J. Hicks, of Leesville, P. O., La., who made Homestead Application No. 7382, for the N. E. 1/4, Sec. 8, T. 2 N., R. 5 W., do hereby give notice of my intention to make final commutation proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before James M. Boyd, U. S. Commissioner at Leesville, La., on June 11, 1901, by two of the following witnesses:

W. J. Bass, of Hicks P. O., La.

M. C. Bass, of Hicks P. O., La.

James Spurgeon, of Hicks P. O., La.

J. W. Lawrence, of Hicks P. O., La.

JOE J. HICKS.  
(Signature of Claimant.)Land Office at Natchitoches, La.,  
April 26, 1911.

Notice of the above application will be published in the

Vernon News, printed at Leesville, La., which I hereby designate as the newspaper published nearest the land described in said application.

J. ERNEST BREDÁ, Register.

Notice to Claimant—Give time and place of proving up and name the title of the officer before whom proof is to be made; also give names and postoffice address of four neighbors, two of whom must appear as your witnesses.

Indorsed: No. 7382. Joe J. Hicks. S. . 2 . . 5. Commutation to Publish, April 26. June 11, 1901. Vernon News.

40

# Notice for Publication.

Department of the Interior.

Land Office at Natchitoches, La.

April 26, 1901.

Notice is hereby given that the following named settler has filed notice of his intention to make final commutation proof in support of his claim, and that said proof will be made before James M. Boyd, U. S. Com. at Leesville, Louisiana, on June 11, 1901, viz., H. E. No. 7382, Joe J. Hicks, for the N. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said lands, viz.:

W. J. Bass, M. C. Bass, James Spurgeon, J. W. Lawrence, all of Hicks P. O., Louisiana.

J. ERNEST BREDÁ, Register.

41

State of Louisiana,  
Parish of Vernon.

Before me, the authorized authority, on this day personally appeared Geo. F. Smedley, editor of the Vernon News, Leesville, Louisiana, who first being duly sworn, says that notice of Final Com. proof of Joe J. Hicks H. E. No. 7382, first appeared in its issue of May 2nd, 1901, and each weekly issue thereafter for 30 days, last publication appearing in the issue of July 11th, 1901.

GEO. G. SMEDLEY, Editor.

Sworn to and subscribed before me at my office at Leesville, La., this the 11th day of June, 1901.

[Seal] JAMES M. BOYD,  
U. S. Com.

42 Certificate as to Posting of Notice.

Department of the Interior.

United States Land Office at Natchitoches, La.,

June 21, 1901.

I, J. Ernest Breda, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 26 day of April, 1901.

J. ERNEST BREDa, Register.

43 Notice for Publication.

Department of the Interior.

Land Office at Natchitoches, La.,

April 26, 1901.

Notice is hereby given that the following named settler has filed notice of his intention to make final commutation proof in support of his claim and that said proof will be made before James M. Boyd, U. S. Com., at Leesville, Louisiana, on June 11th, 1901, viz.: H. E. No. 7382, Joe J. Hicks, for the N. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz.:

W. J. Bass, M. C. Bass, James Spurgeon, J. W. Lawrence, all of Hicks P. O., Louisiana.

J. ERNEST BREDa, Register.

44 (To be used in cases of commuted homestead entries. For taking the testimony of claimant and his witnesses in making commutation proof, use the prescribed forms for "Homestead Proof.")

### Affidavit Required of Claimant.

(Section 2301 of the Revised Statutes of the United States.)

I, Joe J. Hicks, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 7382, made upon the N. E. 1/4, Section Eight (8), Township Two (2) North, Range 5 W., La. Mer., do solemnly swear that I made settlement upon said land on the — day of March, 1899, and that since such date, to-wit: on the 11th day of June, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated about two acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United State, except .....

(Sign plainly with full Christian name.)

JOE J. HICKS.

Subscribed and sworn to before me this 11th day of June, 1901, at my office at Leesville, in Vernon Ph., Louisiana.

JAMES M. BOYD,

U. S. Com'r.

[Seal]

Indorsed: 7382. Affidavit required of claimant.



• 45      Homestead Proof—Testimony of Witness.

I, M. C. BASS, being called as witness in support of the homestead entry of Joe J. Hicks for N. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer., testifies as follows:

Ques. 1. What is your name, age, and postoffice address?

Ans. M. C. Bass, 23 years, Hicks P. O., Vernon Ph., La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim.

Ans. I am. N. E. 1/4, Sec. 8, Tp. 2N., R. 5 W., La. Mer.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Ordinary pine land, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. February, 1899, and built his house and established actual residence March, 1899.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. They have not been absent over four months at any time.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent over four months at any time.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 9. What improvements are on the land, and what is their value?

One dwelling house, 14x14, chimney and gallery; also fruit trees. Valued at \$100.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what

they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

46 Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not; I think he has.

M. C. BASS.

(Sign plainly with full Christian name.)

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 11th day of June, 1901, at my office at Leesville, in Vernon Ph., Louisiana.

(See note on fourth page.)

JAMES M. BOYD,

[Seal]

U. S. Com. for W. D. of La.

(The testimony of witness must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

47 Homestead Proof—Testimony of Witnesses.

I, W. J. BASS, being called as a witness in support of the homestead entry of Joe J. Hicks for N. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer., testifies as follows:

Ques. 1. What is your name, age and postoffice address?

Ans. W. J. Bass, 29 years, Hicks P. O., Vernon Ph., La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am. N. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Ordinary pine land, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. February, 1899, built his house and established actual residence, March, 1899.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. They have not been absent over four months at any time.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent over four months at any time.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About two acres, raising two crops thereon.

Ques. 9. What improvements are on the land, and what is their value?

Ans. One dwelling house, 14x14, chimney, gallery and orchard, valued at \$100.00.

48. Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead?

(If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he has.

W. J. BASS.

(Sign plainly with full Christian name.)

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 11th day of June, 1901, at my office at Leesville, in Vernon Ph., Louisiana.

(See note on fourth page.)

[Seal]

JAMES M. BOYD,  
U. S. Com. for W. D. of La.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

49 Homestead Proof. Testimony of Claimant.

I, JOE J. HICKS, being called as a witness in his own behalf in support of homestead entry, No. 7382, for N. E. 1/4, Sec. 8, Tp. 2 N., R. 15 W., La. Mer., testified as follows:

Ques. 1. What is your name, age and postoffice address?

Ans. Joe J. Hicks, 31 years, Leesville, Vernon Ph., La.

Ques. 2. Are you a native born citizen of the United States, and if so, in what state or territory were you born?

Ans. I am. I was born in Louisiana.

Ques. 3. Are you the identical person who made homestead entry, No. 7382, at the Natchitoches land office on the 19th day of October, 1898, and what is the description of the land now claimed by you?

Ans. I am. N. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. February, 1899, built my house and established actual residence March, 1899. One dwelling house 14x14, chimney, gallery and fruit trees, valued at \$100.00.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Wife and four children. We have not been absent over four months at any time.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. I have not been absent at all. That is, I have not vacated longer than four months at any one time.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 9. What is the character of the land? Is  
50 it timber, mountainous, prairie, grazing or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable.

Ans. Ordinary pine land, most valuable for farming.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. I have not.

Ques. 12. Have you sold, conveyed or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. I have not sold or alienated any of said land.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same and state where the same is kept.)

Ans. I have not.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. I have not made any of any kind since August 30th, 1890.

JOE J. HICKS.

(Sign plainly with full Christian name.)

\*(In case the party is of foreign birth a certified transcript from the Court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.)

51 I hereby certify that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me this 11 day of June, 1901, at my office at Leesville, in Vernon Ph., Louisiana.

JAMES M. BOYD,  
U. S. Com. for W. D. of La.

[Seal]  
(See note below.)

Note: The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

#### Title LXX—Crimes—Ch. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any Court of the United States until such time as the judgment against him is reversed. (See Section 1750.)

Indorsed: Commutation. Homestead Proof. Land Office at Natchitoches, La. Original Application No. 7382. Final Certificate No. 21228. Approved: J. Ernest Breda, Register. C. J. Greene, Receiver. U. S. Land Office, Natchitoches, La. Received on July 2, 1901, at 12 o'clock M. \$401.25.

52

Receiver's Receipt, No. 7382.

Application, No. 7382.

Homestead.

Receiver's Office, Natchitoches, La., Oct. 19th, 1898.

Received of Joe J. Hicks the sum of eighteen dollars no cents; being the amount of fee and compensation of register and receiver for the entry of N. E. 1/4 of Section 8 in Township 2 N. of Range 5 W., La. Mer., under Section No. 2290, Revised Statutes of the United States.

J. S. DIXON, Receiver.

\$18.00

16124 a 2.50 Excep. Receipt No. 20667.

Note: It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

\*\*\*\*\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the lands and improve the premises, but for no other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection of the settler disposing of the same. But the question whether the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for the recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*\*\*\*\*See note in red ink, which registers and receivers will read and explain thoroughly to person making application for lands where the affidavit is made before either of them.

53

Homestead—Act of May 20, 1862.

(Revised Statutes of the United States, Section 2357.)

Excess Receiver's Receipt No. 20667.

Receiver's Office, Natchitoches, La., Oct. 19th, 1898.

Received of Joe J. Hicks the sum of three dollars ten cents, being in full for one acres and twenty-four hundredths of N. E. 1/4, La., Mer., Section No. 8, in Township No. 2 N. of Range No. 5 W., being excess in said tract over the area entered under the Homestead Act, per application and receipt No.

J. S. DIXON, Receiver.

\$3.10

Indorsed: No. — Excess Receipt. Land Office at Natchitoches, La. Homestead Application No.

54

No. 21228.

Receiver's Office at Natchitoches, La., July 2nd, 1901.

Received from Joe J. Hicks of Leesville P. O. of Vernon Parish, Louisiana, the sum of four hundred dollars and no cents; being in full for the northeast quarter of Section No. Eight in Township No. Two North of Range No. 5 W., La. Mer., containing one hundred and sixty-one acres and 24 hundredths, at \$2.50 per acre.

C. J. GREENE, Receiver.

\$400

\$1.18 testimony fee received. Number of written words, 788. Rate per 100 words, 15 cents.



55

No. 21228.

Receiver's Office at Natchitoches, La., July 6th, 1901.

Received from Joe J. Hicks of Leesville P. O. of Vernon Parish, Louisiana, the sum of four hundred dollars and no cents; being in full for the northeast quarter of Section No. Eight in Township No. Two North of Range No. 5 W., La. Mer., containing one hundred and sixty-one acres and 24 hundredths, at \$2.50 per acre.

C. J. GREENE, Receiver.

\$400.00

\$1.18 testimony fee received. Number of written words, 788. Rate per 100 words, 15 cents.

Indorsed: No. 21228. Joe J. Hicks. Send patent to Fielder B. Chew, Washington, D. C. Filed March 5th, 1902. Filed 17th day of July, 1901, and recorded in Vol. No. 1, page 240. Patent Record, Vernon Parish. W. A. Winfree, Dy. Clerk.

56

No. 21228.

Land Office at Natchitoches, La., July 6, 1901.

It is hereby certified that, in pursuance of law, Joe J. Hicks, residing at Leesville in Vernon County, State of Louisiana, on this day purchased of the register of this office the northeast quarter of Section No. 8 in Township No. 2 North of Range No. 5 West of the La. principal meridian, Louisiana, containing 161.24 acres, at the rate of two dollar [dollars] and fifty cents per acre, amounting to four hundred and three dollars and ten cents, for which the said Joe J. Hicks has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the commissioner of the general land office, the said Joe J. Hicks shall be entitled to receive a patent for the lot above described.

J. ERNEST BREDÁ, Register.

Indorsed: No. 21228. 1902—38850. Fielder B. Chew, City. Cash Entry. Land Office at Natchitoches, La. Sec. 8,

Town. 2, Range 5. Commuted H. E. No. 7382. Div. "C," List No. 11. Appearance of Fielder B. Chew, Dec. 30/01. Meh. 15/02 to Atty. Approved March 1, 1902 by O. N. Burke, Clerk. Division "C." Patented April 1, 1902. Recorded Vol. 127, page 285. 4/128. Filed in evidence in Case # 382, 3/1/09, marked Exhibit "B." J. F. Slattery, M. in C.

57 Special agents must retain a press copy of this report.

### Report of Fraudulent Claim or Entry.

This form must be used only in cases found or believed to be fraudulent or abandoned. Cases found to be lawfully made and maintained need not be reported on this form, but must be reported by letter containing brief statement of the facts.

In cases of homestead claims the blanks must be filled up strictly as here indicated. In other cases the form will be followed as closely as applicable, and in all cases reported such other points will be covered as the nature of the case may require.

In every instance when names of parties or witnesses are given, the postoffice address and residence must also be stated.

1. Name of claimant: Joseph J. Hicks.
2. Description of land covered by filing or entry: N. E. 1/4, Sec. 8, T. 2 N., R. 5 W., La. Mer.
3. Date of examination: May 23, 1906.
4. Character of land (timber, mineral, agricultural, or desert.) If timber land, whether, if cleared, it would be unfit for agricultural; if for timber-culture entry, whether section is naturally void of timber; if desert, whether grass or other agricultural crop could be produced without artificial irrigation; if mineral, character and evidence thereof: Pine timbered land, which, if cleared, would be adapted to agriculture.
5. Date and number of filing or entry; if proof has been made, date of proof, and number of final certificate: H. E.

No. 7382 Oct. 18, 1898, C. E. No. 21228, July, 1901. Pat. issued April 1, 1902.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant, and nature of claim: The land is unoccupied, but is claimed by the "Wright-Blodgett Co., Limited," of Saginaw City, Mich., by virtue of a warranty deed from entryman.

7. Is the land inclosed for stock ranging or other purposes, and if so, by whom? Give extent of such inclosure, and describe the land inclosed: The land is not inclosed.

8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold: No timber has been cut or removed from the tract.

58 9. Character, extent, and value of improvements in detail, when and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were constructed, and cost of same. If a timber-culture entry, amount and date of breaking, planting, etc.: There are no improvements of any character on the tract, but evidences of a double house with a passage bet. the two houses, built across the line bet. this claim and the adjoining homestead entered by W. O. Allen, his brother-in-law.

10. Residence of claimant. When actually established on the land, and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land, or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to make the entry, and is known in the neighborhood of the claim: Claimant resides at Leesville, La., 25 miles from his homestead, where he had resided continuously with his wife and children since the summer of 1898. He is, and has been clerk of Vernon Parish, Louisiana, since June 8th, 1900, and for a year or more before

that time was in the employment of B. H. Lyons, of Lyons & Smart at that place (Leesville).

11. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant. Whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferee, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record; whether the entry has been abandoned or relinquished, and if so, when and for whose benefit: There is no evidence that the entry was made at the instance or in the interest of any other party. The records of Vernon Parish, La., contain the record of a warranty deed from the entryman to the Wright-Blodgett Co., Limited, of Saginaw City, Mich., and the consideration named is \$800.00. Said deed is dated July 10, 1901, and is recorded in Bk. "S," p. 545.

12. Names and postoffice address of witnesses; their reliability; abstract of their testimony: William A. Winfree, Leesville, B. H. Lyons, Leesville, James Spurgens, Hicks, La., or any reputable citizen of Leesville, most of whom object to giving affidavit, but they assured me they would testify if required by proper tribunal.

13. Have you secured affidavits of witnesses? If so, submit them or copies thereof: Affidavit of W. A. Winfree, Dep. Clerk under Hicks, submitted herewith. (See also affidavit of F. M. Ingalls, probably made before Irwin. SWW.)

14. Have you requested claimant to make a statement? If so, and he does not intend to offer proof, did you try to obtain a relinquishment or an affidavit to that effect (without coercion)? No.

59 15. Was the fraud willful? Yes.

16. Have any legal proceedings been instituted? No.

17. Action recommended by agent: That a suit be instituted to set aside and annul the patent.

Dated at New Orleans, La., Aug. 23rd, 1906.

CLAYTON G. COLEMAN,  
Special Agent, General Land Office.

Note: If the space allotted under any of the above headings is not sufficient to state the particulars required, state the same on a separate sheet referring to the number of the question, and attach the same to the report.

Indorsed: Report of Clayton G. Coleman, Special Agent, G. L. O., New Orleans, La. Aug. 23rd, 1906. In the case of Homestead. Entry No. 7382. L. O., Natchitoches, La. Name, Joseph J. Hicks. Tract N. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W. No. of Report, —. Recommendation, Suit to Annul Patent. Date of office letter directing the investigation, August 27, 1906. Respectfully forwarded. Approved: S. W. Williams, Chief Field Div. "P" "MH." U. S. General Land Office, Received Aug. 29, 1906. 139637.

60            There is also evidence of an inclosure embracing about 2 1/2 acres, which is partly on the claim in question and partly on the adjoining claim of Allen. About 1 1/2 acres within said inclosure seem to have been broken several years ago. There are nearly a hundred pine trees standing within the land that was inclosed, but not one was deadened even on the land that was broken. The houses and fence were burned by a forest fire a year or two ago. The final proof in this case was made before James M. Boyd, U. S. Comm'r., whose reputation in this line was notoriously bad. There is no evidence of a well on the premises, for which I made a diligent search, nor is there any living water on or near the claim.

10. The purchase of this claim was negotiated by Nat Wasey, the authorized and accredited agent of the Wright-Blodgett Co., to examine, purchase, acquire and pay for timbered lands in Vernon Parish for them, and he was assisted by James M. Boyd, as sub-agent, although he was at the time U. S. Comm'r., and as such empowered to take final proofs. Both of these men knew well that the entryman, Hicks, had never lived a day on his homestead.

(See affidavits of John Johnson and C. M. Ingalls, in case of Bedie Akin, file 22867, and affidavit of Michael Smith, in case of Elijah Z. Boyd, file 24222.)

"MH"

61 State of Louisiana,  
Parish of Natchitoches.

F. M. Ingalls, a citizen of the United States, being first duly sworn, upon his oath deposeth and saith as follows:

I am personally acquainted with the location of the S. W. 1/4 of Section 8, T. 2 N., R. 5 W., La. Mer., the same being the land entered by J. J. Hicks. I have passed over this land several times and have seen the improvements placed there by the entryman. Shortly after the making the entry, he erected a box house, which, I suppose, was about 18x20 feet. He had about six acres enclosed within a fence, but I never seen any crops growing there, but he might have had crops there. Hicks was living in Leesville at the time this entry was made and shortly thereafter he was elected clerk of the District Court and has been serving in that capacity even up to the present time. He is a man with a family and his family always lived in Leesville with him. I know that he has never made his home on the homestead. He sold his land to Wright-Blodgett Co. I saw the check that Hicks got for his land and he told me it was the money for his homestead. The check was for the amount less the amount the Co. had advanced for commuting the entry. I could not just state the amount, as the check covered the Walter Allen purchase and the Hicks purchase both and was for about \$1100.

F. M. INGALLS.

Subscribed and sworn to before me, this the 18th day of Dec., 1902.

.....  
Special Agent, G. L. O.

Indorsed: 576. J. J. Hicks, Vernon.

62 State of Louisiana,  
Vernon Parish.

William A. Winfree, having been duly sworn, deposes and says that he is a citizen of the United States, forty-one years of age, a farmer by occupation and a resident of Vernon Parish, Louisiana; that he is well acquainted with Joseph J. Hicks, of Leesville, La., who entered a homestead under the land laws of the United States, which is described as the N. E. 1/4 of

Sec. 8, T. 2 N., R. 5 W., La. Mer.; that he has known the said Hicks ever since he was a boy; that the said Hicks is now clerk of Vernon Parish and has been since June 8th, 1900; that he, affiant, was the deputy clerk in the office under the said Hicks from June 8th, 1900, for and during the whole time until July, 1903; that the said Hicks came with his family to Leesville, La., in the summer of 1898, and established his residence in the town, and that he has continued to live there with his family from that time until the present, except that he went to Hot Springs, Arkansas, in June, 1900, and remained there for treatment for about two or three months, and returned to his home and family at Leesville. Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

W. A. WINFREE.

Subscribed and sworn to before me in Vernon Parish, La., this 30th day of July, A. D. 1906.

CLAYTON G. COLEMAN,

Special Agent, G. L. O.

63            State of Louisiana,  
                Vernon Parish, ss.

C. M. Ingalls having been duly sworn, deposes and says that he is a citizen of the United States, sixty years of age, a resident of Vernon Parish, La., and a farmer by occupation; that he is well acquainted with the homestead entry of Bedie Akin, in Sec. 24, T. 3 N., R. 5 W., La. Mer., and has lived within about two miles of the said homestead entry for many years; that he was acquainted with Nat Wasey, who was the authorized agent of the Wright-Blodgett Company, Limited, of Saginaw City, Michigan, to purchase timbered lands in this parish; that the said Wasey came to this vicinity with one James M. Boyd, of Cora, La., who was associated with him and assisted him in examining said lands and acquiring title to the same; that about five years ago they came together to this vicinity to examine the said homestead of Bedie Akin; that the said Boyd stayed at affiant's house while here, and the said Wasey stayed at the house of his son, George W. Ingalls; that they saw and inspected the said homestead thoroughly and saw the improvements, so called, on the claim and that they knew well that the said Bedie Akin had never resided on the said claim, but lived with her father near Hineston, La., at least ten miles

distant; that they knew well that no one had ever lived in the house, which had no window, chimney, or floor, and never even had a door hung.

Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

C. M. INGALLS.

Subscribed and sworn to before me in Vernon Parish, La., this 9th day of June, A. D. 1906.

CLAYTON G. COLEMAN.

Special Agent, G. L. O.

64 State of Louisiana.

Vernon Parish, ss.

John Johnson, having been duly sworn, deposes and says that he is a citizen of the United States, fifty-one years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he is well acquainted with Nat Wasey, who lived in his community about five years, or from the year 1899 to 1904 inclusive; that the said Wasey was the duly accredited and authorized agent of the Wright-Blodgett Company, Limited, of Saginaw City, Michigan, to purchase timbered lands in Vernon Parish, La., and that he did purchase a large quantity of land in said parish for the said company; that he, affiant, sold to the said Wasey 160 acres of timbered land for the said company, and was paid therefor by the said Wasey; that the deed for the said land was made by him to the said Wright-Blodgett Company; that the said Wasey always examined the lands, whether homesteads or otherwise, before purchasing the same, and knew well the improvements thereon, and the status thereof.

JOHN JOHNSON.

Subscribed and sworn to before me in Vernon Parish, La., this 8th day of June, A. D. 1906.

CLAYTON G. COLEMAN.

Special Agent, G. L. O.

65 State of Louisiana.

Vernon Parish, ss.

Michael Smith, having been duly sworn, deposes and says that he is a citizen of the United States, fifty-four years of



age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he was well acquainted with Nat Wasey during the time he was in this community buying and acquiring timbered lands for the Wright-Blodgett Company of Saginaw City, Michigan, during a period of about five years, from about 1899 to 1904; that the said Wasey was the duly accredited and authorized agent of the said company during that time to buy, acquire and pay for timbered lands in Vernon Parish, La., for said company; that he always examined the homesteads which he purchased for said company thoroughly before purchasing the same, both as to the timber thereon, the improvements and as to whether the claimants had complied with the requirements of law; that he made such investigation in regard the homestead claim of Elijah Z. Boyd, which is located in Section 14, T. 2 N., R. 5 W., La. Mer., and knew that the said Boyd had not resided on his said homestead during the life of his claim, but had lived during that time at Cora, La., a distance of some four or five miles from the said homestead.

Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

MICHAEL SMITH.

Subscribed and sworn to before me at Leander, La., this 9th day of June, A. D. 1906.

CLAYTON G. COLEMAN,  
Special Agent, G. L. O.

"MH"

Indorsed: Filed Dec. 3rd, 1906. W. Jackson, Clerk.

\* \* \* \* \*

67 United States Circuit Court, Fifth Circuit, Western  
District of Louisiana.

United States Government

vs.

No. 382.

Joe J. Hicks and The Wright-Blodgett Co., Ltd.

No. ——. In Equity.

Testimony taken out of Court by order of Court before the Hon. Walter Jackson, clerk of said Court and special examiner under appointment of the Hon. Alex Boorman, Judge, of date May 30, 1907, at Lake Charles, La., on the — day of January, 1908.

E. P. Mills, Asst. U. S. Atty., for Complainant.

Messrs. Mitchell & Young and Hall & Monroe, for Complainants.

68

# STENOGRAPHER'S OATH.

I, Fred W. Pulliam, hereby solemnly swear that I will faithfully and correctly take the testimony of all witnesses in the case of the United States vs. Joe J. Hicks and the Wright-Blodgett Co., Ltd., taken at Lake Charles, this — day of January, 1908, and that I will file all documents offered in evidence and correctly transcribe the testimony of the witnesses and forward the same to the clerk of the United States Circuit Court at Shreveport, La., within twenty days from the date hereof.

.....  
Stenographer.

Inasmuch as the witnesses in these cases have come to testify, some of them from a great distance and desire to return to their homes as soon as possible, it is agreed upon that they sign the stenographer's notes. The further signature upon their part is waived.

69 C. M. INGALLS, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. Where do you live, Mr. Ingalls?

A. I live east of Stilly Postoffice, Ward Six, just across the Calcasieu River.

Q. How old are you?

A. Sixty-two.

Q. How long have you lived in that country?

A. Ever since '61. I have lived on my present place ever since 1883, and I lived within six miles of this place from 1861 to 1883.

Q. Do you know J. J. Hicks?

A. Yes, sir; I know one J. J. Hicks, clerk of the Court of Vernon Parish.

Q. He is the only Hicks in that parish?

(Objected to by Mr. Monroe as leading.)

Q. Do you know of anyone else in that neighborhood of the same name?

A. I do not.

Q. What was J. J. Hicks occupied in 1898?

A. He was an official of Vernon Parish.

Q. What official?

A. 1898—how long ago was that—let's see, about ten years ago—I think his second term of clerk of Court there, and if he wasn't clerk of the Court I do not know his occupation there. That is ten years ago.

Q. Just about.

A. He has been clerk of Court there so long that I could tell on oath how long. This is his second term.

Q. Where did he live in 1898?

A. He lived in Leesville.

Q. Where did he live 1899?

A. In 1899 he lived in Leesville.

Q. Where did he live in 1900?

A. He lived in the Town of Leesville.

70 Q. Lived there with his family?

A. Yes, sir.

Q. Now, Mr. Ingalls, where did he live in 1901?

A. He lived in the Town of Leesville.

Q. Do you know the location of the northeast quarter of Section 8, Town. 2, Range 5, Vernon Parish?

A. That must be about Hick's homestead.

Q. Do you know that Hicks made a homestead and about the location?

A. I do not.

Q. Do you know where this land is?

A. Approximately? yes, sir.

Q. Were you ever on the land?

A. I suppose that I have been on it. I have hunted and stock-hunted all over there. I know about where Sec. 8 is.

Q. State whether or not it is a fact that Mr. Hicks is pretty well known in the parish?

(Objected to by Mr. Monroe as leading.)

A. He was born and raised there.

Q. Do you know whether or not he ever lived on this land?

A. I do not think he could because his home was always in Leesville. I never went to Leesville unless I went to the clerk's office and frequently stayed all night at his home.

(Objected to by Mr. Monroe on the ground that it is the witness's opinion and he is not testifying as an expert.)

A. I never knew his home to be on his homestead, but I know it to be in the Town of Leesville.

Q. Did his family live in Leesville?

A. Yes, sir; every time I was there.

#### Cross-Examination.

By Mr. Monroe:

Q. As I understand your testimony it was that you had a general idea of where Section 8 was, but not any specific idea?

A. Well, I might say I know where the land is—the section, but how the lines run, I do not—because I have been in that country a long time and know where the northwest corner

of the township is. It is near the old public road—about sixty yards.

71 Q. And you think possible you have been all over Section 8 cow-hunting and hunting, but you have no specific recollection?

A. Yes, sir; I know I have been on it, but I have never been interested in it and have never been on it since Mr. Hicks homesteaded there.

Q. You have never been on it since that time?

A. I have not.

Q. How far do you live from Leesville?

A. Thirty miles.

Q. How often do you go into Leesville?

A. I go sometimes once a month, and sometimes two or three times. My son is there and I do a good deal of marketing and sold cotton there.

Q. You go there when you make your crop?

A. Yes, sir; and often.

Q. And during the years 1898 and 1899 you happened to see Mr. Hicks there when you went there?

A. Yes, sir; I saw him in Leesville.

Q. That is all you know about it?

A. That is all I know definitely about it. In regard to his homestead I never seen it since he homesteaded it.

Q. You are not prepared to swear that he did not homestead it?

A. No, sir; I am not. I do not know whether he did or not.

#### Redirect Examination.

By Mr. Mills:

Q. About how far is Section 8 in the township and range that I described before from where you live?

A. Well, I would suppose it to be about four miles.

Q. I believe you stated that when you went to Leesville that you frequently stayed all night with Mr. Hicks?

A. I did.

Q. Was he a particular friend of yours?

A. Yes, sir; I knew his father well.

Q. Did you ever visit him or call upon him upon this land?

A. I did not.

Q. Did he ever invite you to come to see him there?

A. He never did.

72 Q. Did you ever see him or any of his family in that neighborhood?

A. I met him between Leesville and Walnut Hill Postoffice in his surrey and he said he was going to his homestead. That must have been three years ago. I would not swear definitely—it may have been a little longer, and he told me he was going out to his homestead.

Q. Did he tell you what he was going to do there?

A. He did not.

Q. Did he have any household furniture with him?

A. I did not see any. I simply saw him and wife and children.

#### Recross-Examination.

By Mr. Monroe:

Q. Was there a house on Section 8?

A. I could not tell you, sir.

Q. Was there any cultivation on Section 8.

A. I cannot tell you anything about it. I was on it eight or ten years ago and I never saw any house on it then. I know I have never been on the land since there was any house on it, if there is one.

Q. But you have never been on the land since the years of 1898 and 1899?

A. I have not.

Q. When you stayed over night with Mr. Hicks was he boarding or residing there?

A. He had his own residence.

Q. When was it that you stayed with him over night?

A. I stayed with him about twelve months ago all night.

Q. When did you stay all night before?

A. It was about five or six months before, me and my daughter stayed all night about six months before that.

Q. Those were the only times?

A. No, sir.

Q. When else?

A. I do not remember. I frequently went there and he always asked me to stay with him, but for the last year I have gone to my son's. He moved there.

73 Q. Then in the past year or two you have on several occasions stayed all night with Mr. Hicks?

A. No, sir; it has been about twelve months, and six months before that and every occasionally or so for the last ten years or so.

Q. When was the first time you ever stayed all night?

A. Now, sir; I just couldn't tell you.

Q. About four or five years ago?

A. Yes, sir; every bit of that long, maybe five years.

Q. It is hard to remember exactly how long ago it is?

A. Yes, sir; it is. I have never set these things down and paid but little attention to it, though I well remember staying every once in awhile with Mr. Hicks at Leesville. There is a gentlemen [gentleman] in there now (pointing to the other room) that I slept together with at Mr. Hick's in Leesville.

#### Redirect Examination.

By Mr. Mills:

Q. You stated that it has been at least five years ago since the first time you stayed with Mr. Hicks?

A. Yes, sir; it has been all of that.

Q. Do you remember when Mr. Hicks first went to Leesville?

A. I do not.

Q. How long after he first went to Leesville was the first time you stayed all night with him?

A. I cannot make any definite statement about that, I do not remember.

Q. Do you know whether or not you stayed all night with him as far back as 1898?

(Objected to by Mr. Monroe as leading.)

A. Well, I do not definitely remember that I did. I know that it has been several years. I go to Leesville and I go stay with Mr. Hicks, but I do not remember the exact year, or what date it was.

Q. Do you know whether or not you stayed all night with Mr. Hicks as far back as 1900?

(Objected to by Mr. Monroe as leading.)

A. Yes, sir; I am quite sure I did.

74

Recross-Examination.

By Mr. Monroe:

Q. How do you fix the year 1900? You testified you thought you stayed there five years, or maybe six years ago—that would be a little longer than that?

Q. Well, it seems to me about that time, and I told you I kept no record of these things and can't well remember.

Q. It seems to you five or six years ago?

A. About that long.

(Signed) C. M. INGALLS.

75

F. M. INGALLS, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. Francis Marion Ingalls.

Q. How old are you?

A. Forty years.

Q. Where do you reside?

A. At Leesville.

Q. How long have you lived in Leesville?

A. Since April, 1907.

Q. Where did you live prior to that in 1906?

A. Oakdale.

Q. During 1898-1899-1900 and 1901 where did you live?

A. In 1898, 1899 and 1900 I lived on Section 22, Town. 3 North of Range 5 West.

Q. How far was that from the northeast quarter of Section 8, Town. 2 North of Range 5 West?

A. It is three or four miles, I suppose—I guess four and a half miles.

Q. Where did you live in 1901?

A. In 26-3-5.

Q. How far is that from the land I have described?

A. I suppose between three and four miles.



Q. Do you know J. J. Hicks?

A. Yes, sir.

Q. How long have you known him?

A. I have known Mr. Hicks—well, we were boys together. I have known him for thirty years at least.

Q. Do you know where Mr. Hicks lived in 1898?

A. Why, at this time I couldn't say, I do not remember—it has been so long ago and was something I did not try to keep of in those days unless I took a note of it and it has been so long ago that I could not refresh my memory enough to state positively.

Q. Do you know where he lived in 1899?

A. I am not positive.

Q. Do you know where he lived in 1900?

76 A. I suppose that he lived in Leesville.

Q. Do you know where he lived in 1901?

A. My memory serves me he lived in Leesville.

Q. Did Mr. Hicks hold any official position in Vernon Parish during the years I have mentioned?

Q. [A.] Why, if my memory serves me right, Mr. Hicks was elected clerk of the Court in 1900 of Vernon Parish.

Q. Where is the courthouse in Vernon Parish?

A. Leesville.

Q. Where is the office of the county clerk?

A. It is in the courthouse.

Q. Were you ever during the years 1898, 1899, 1900 and 1901 upon the northeast quarter, Section 8, Town. 2 South of Range 5 West in Vernon Parish?

A. I am not positive that the northeast quarter was—I am not positive that I was, I have never run those lines and do not know. I know about where they were—that is, I was told.

(Objected to by Mr. Monroe.)

Q. Do you know about where it is?

A. Yes, sir.

Q. Have you been through that territory during those years?

A. Yes, sir.

Q. Do you know whether Mr. Hicks lived on that land during those years?

A. I could not say at this time. I do not remember. I

have not kept a note of these things. I was at this place in question twice and I saw Mr. Hicks there one time, and that is all I can bring to my mind.

Q. At that time did you see any of his family there?

A. To the best I can remember there was no one but Mr. Hicks and Walter Allen.

Q. Was he married at that time?

A. He was.

Q. Did he have any children?

A. Yes, sir.

Q. How many?

77 A. I could not tell you. I have stayed with Mr. Hicks at his home at Leesville and he had some children. He had a daughter and a son that I remember of, but I do not know how many.

Q. How old is that daughter and son now?

A. I suppose his daughter is sixteen or seventeen.

Q. How old is the son?

A. I suppose fifteen or sixteen. That is also only supposition.

(Signed) F. M. INGALLS.

By Mr. Monroe:

Q. You have no definite information as to when Mr. Hicks became deputy clerk?

A. No, sir; I could not positively say definitely at what time for certain.

78 JAMES A. HEARD, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. James A. Heard.

Q. How old are you?

A. Thirty-seven.

Q. Where do you live?

A. At Slabtown, Vernon Parish.

Q. How long have you lived there?

A. Since 1891.

Q. What is your occupation?

A. Farming.

Q. Did you live there in 1899, 1900 and 1901?

A. Yes, sir.

Q. Did you know at that time a man named Nat Wasey?

A. I did.

Q. Where did he live?

A. Brushy Creek.

Q. How far from you?

A. Eight miles.

Q. What was his occupation at that time?

(Counsel for defendant requests the examiner to charge this witness that in this testimony that he is to testify not as to anything he may have heard or been told but exclusively as to things which have come within his own personal knowledge.)

Counsel for plaintiff objects to any instructions being given by the examiner for the reason that under the order of reference the examiner has no authority to pass upon a competency on incompetency of evidence and that such an instruction would be equivalent to passing upon the competency or incompetency of evidence.

By Mr. Jackson, Special Examiner:

The request is refused for the reason given by the counsel for the government.

Q. What was his occupation in 1899, 1900 and 1901?

A. He was buying timber.

Q. How do you know that?

A. By seeing what he was doing.

Q. You know that then of your own personal  
79 knowledge?

A. I do.

Q. Saw him buying for himself or someone else?

A. For the Wright-Blodgett Company.

Q. How do you know that?

A. The deed was transferred.

Q. Do you know that of your own personal knowledge?

A. I do.

Mr. Monroe objects to the last answer on the grounds that it is not the best evidence.

(Signed) JAMES A. HEARD.

(It is agreed that the above testimony of the witness in regard to Nat Wasey is to be incorporated in the transcript of the testimony of all the cases except those of William Hester and Krause & Mangham.)

80 B. H. LYONS, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. B. H. Lyons.

Q. What is your age?

A. 45 years.

Q. What is your occupation?

A. I am engaged in the lumber business right now.

Q. Where do you live?

A. I live in Leesville.

Q. How long have you lived in Leesville?

A. I have lived there since 1900.

Q. Do you know Joe J. Hicks?

A. I do.

Q. Where did he live?

A. He lives there now.

Q. Was he living there when you went there in 1900?

A. Yes, sir.

Q. What part of the year was it when you moved there?

A. I moved there in the latter part of January.

Q. What was his occupation at that time?

A. He was working for the firm of E. D. Smart at that time.

Q. What was Mr. Hicks doing in 1901?

A. He was clerk of the court.

Q. When was he elected clerk of the court?

A. In April, 1900.

Q. How long did he continue to hold that office?

A. He has held it continuously since.

Q. Where did Mr. Hicks live in 1900?

A. He lived in Leesville.

Q. Did he have his family there?

A. Yes, sir.

81 Q. Where did he live in 1901?

A. At Leesville.

Q. Have his family there?

A. Yes, sir.

### Cross-Examination.

By Mr. Mitchell:

Q. How many terms of court do they have usually in the Parish of Vernon every year?

A. Why, I think that their terms—I do not remember really what number of terms of court they have. I know they have two criminal terms.

Q. Now during the time you have mentioned, 1900 and 1901, did Mr. Hicks have any assistance in the clerk's office?

A. Yes, sir.

Q. Was it necessary for Mr. Hicks to be in his office at all times to keep up with the business of that office?

A. I do not think it was.

Q. It is not a fact that he was frequently absent from the Town of Leesville at different times during that time?

A. He was absent on different occasions.

Q. You do not know of you [your] own personal knowledge whether or not Mr. Hicks spent any portion of his time on his homestead?

A. No, sir; I know that he was there with his family on one or two occasions. I do not remember distinctly. I understood that he spent part of his time on his homestead.

By Mr. Mills:

The answer in so far as it contains the statement that the witness understood that Mr. Hicks was on his homestead, is objected to as hearsay.

By Mr. Monroe:

Q. About how many days were they actually holding court during the year in Leesville?

A. The Criminal Court lasts usually about two weeks.

Q. They hold court twice for a period of two weeks each time?

A. Yes, sir.

82 Q. And during these terms Mr. Hicks has deputy clerks there?

A. Yes, sir. In fact, during his first term Alfred was equally interested with him in the division of the office, and acted as chief deputy.

Q. Since that time they have had a rather radical disagreement, have they not?

A. Yes, sir.

Q. They are now at daggers drawn?

A. I do not know about that.

Q. At least they are opposed to each other?

A. Yes, sir.

Q. How often would you see Mr. Hicks? He might have been out of the Town of Leesville for weeks at a time without your noticing it?

A. Well, he was out that long at a time, I know, but I do not know how often.

Q. Sometimes you would know where he was and sometimes not?

A. Yes, sir.

#### Redirect Examination.

By Mr. Mills:

Q. On these two occasions when he was out with his family for how long a time was he gone?

A. I do not think longer than two weeks.

Q. Is it not a fact that the business of the clerk's office at Leesville besides attendance on terms of court includes the recording for the parish, recording the deeds and the various work of the clerk's office?

A. Yes, sir.

Q. Is it not a fact that the clerk's office is kept open through the year whether court is in session or not?

A. Yes, sir.

Q. Is it not a fact that there are also several terms of court besides the criminal terms?

A. Yes, sir.

83

## Recross-Examination.

By Mr. Monroe:

Q. Your testimony is that you are certain that Mr. Hicks and his family were on that homestead twice for two weeks, and you do not know how often Mr. Hicks was personally on there by himself?

A. No, sir; I did not say it that way because I could not. I stated that he was out of town with his family.

Q. You understood that he was out of town?

A. Yes, sir.

Q. You understood he was out of town other times, and did not know where he was?

A. I know he was frequently away from home and I did not know where he was.

(Signed) B. H. LYONS.

84

JOHN JOHNSON, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. John Johnson.

Q. Where do you live?

A. In Vernon Parish, Fifth Ward, near Craven P. O.

Q. How far is that from Leesville?

A. About 25 miles.

Q. How long have you lived there?

A. I think I have been there sixteen years last fall.

Q. About how old are you?

A. I will be thirty-five years old Monday next.

Q. Did you ever know a man named Nat Wasey?

A. Yes, sir; I know him, or did.

Q. When did he first come into that country?

A. I could not tell you how long it has been.

Q. About how long?

A. He was there along about seven years ago—he was there, I am pretty sure, I could not say positively, but that is my recollection.

Q. Did you ever have any dealings with him?

A. I sold him a piece of land while he was there.

Q. What kind of land?

(Objected to by Mr. Monroe as irrelevant.)

Q. What kind of land was this you sold him?

A. It was timber land.

Q. What kind of timber?

A. Part of it was good heavy open and part of it was along a little creek—a swamp with a creek on one edge.

Q. Did Mr. Wasey make any statement to you as to for whom he was purchasing this land?

(Objected to by Mr. Monroe on the ground that it is hearsay or if it is to be construed as an admission by an agent it is beyond the scope of his authority.)

85 A. I think he told me he was buying for the Wright-Blodgett people.

Q. Do you just think that or are you sure?

A. Well, I would not be sure, but I think he told me he did.

Q. Do you remember to whom the deed was made?

(Objected to by Mr. Monroe on the ground that the deed is the best evidence.)

Q. Well, I would hate to say positively that I do know, but I returned my deed. I never had it recorded to Mr. Wasey and told him to make his deed and have recorded and I could not tell you whether it was to him or the Wright-Blodgett people. I could not positively say.

Q. Do you know of any other land that Mr. Wasey bought in that neighborhood?

Q. [A.] No, I could not said [say] that I know that he did buy any, but I was told that he bought some.

Q. Never mind what you heard about it.

Q. Have you ever been indicted?

A. Yes, sir; I reckon so.

Q. What have you been indicted for?

A. I was indicted for getting a row with an old gentleman at his place long years ago, but I was nothing but a boy like.



Q. On what charge?

A. For swearing and cursing and using obscene language near a residence.

Q. Were you ever arrested on any other charge?

A. No, sir.

(Dictated by Mr. Mills:)

It is agreed between counsel for both sides that the above testimony of John Johnson is to be added to each one of the cases covered by this submission except, 385, the United States of America vs. Henry L. Hogan, et al., and in that agreement it is understood that the signature of this testimony is waived in all the cases except the present.

(Signed)      JOHN X JOHNSON,  
his  
mark

I attest to this signature.

FRED W. PULLIAM, Stenographer.

86      W. A. WINFREE, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. William Alfred Winfree.

Q. What is your age?

A. Forty-four years.

Q. Where do you reside?

A. At Hawthorne, three miles north of Leesville.

Q. How long have you lived there?

A. I have lived there, you might say, right there in Leesville steady for the last twelve or fifteen years.

Q. What is your occupation?

A. I am farming now. I have worked in several places. I worked some in the sheriff's office and some in the clerk's office. At present, though, I am farming, selling milk and butter, etc.

Q. What were you doing in 1898?

A. I was working the clerk's office.

Q. In what capacity?

A. As deputy clerk.

Q. Who was clerk?

A. J. J. Hicks.

Q. What was Mr. Hick's first name?

A. I am not sure, I think it was James Josiah—James J. I think, I am not sure.

Q. By what name is he known?

A. Joe.

Q. What were you doing in 1899?

A. I was at work in the clerk's office.

Q. Who was clerk?

A. J. J. Hicks ..

Q. What were you doing in 1900?

87 A. Why, I've got that wrong. I commenced work in the sheriff's office in 1898, and in the clerk's office in June, 1900.

Q. How long did you work there in the clerk's office?

A. A little over three years.

Q. Who was there in 1898?

A. Z. C. Craft.

Q. Who was clerk in 1900?

A. J. J. Hicks.

Q. Who was clerk in 1901?

A. J. J. Hicks.

Q. How long did he continue as clerk?

A. He is clerk now.

Q. He has been clerk ever since?

A. Yes, sir.

Q. Where did he live in 1899?

A. He lived where he lives now right there in town.

Q. With whom did he live?

A. He lived with his family.

Q. What size family did he have in 1898?

A. I do not know. He had a wife and several children, somewhere from one to five or six.

Q. Did he board or rent, or did he reside on his own premises?

A. He bought that place—

(Objected to by Mr. Monroe on the ground that the best evi-

dence is the record, and he asked that the testimony be stricken out.)

Q. Do you personally know that he bought that ground?

A. I saw it on record.

(Objected to by Mr. Monroe on the ground that the best evidence is the record and he asked that the testimony be stricken out.)

88 Q. During the years 1898, 1899, 1900 and 1901 where did Mr. Hicks live?

A. He lived there in Leesville.

Q. Where did his family live?

A. In Leesville. In the spring of 1900 he went to Hot Springs, Ark.; he was absent three or four months.

Q. Was he absent from Leesville any length of time during these years except for this occasion?

A. No, sir; not for long; he might possible have been for a week.

Q. Do you know the location of the N. E. 1/4, Section 8, Twp. 2 N., R. 5 W.?

A. I know it by the country. I suppose I have been on it in my life.

Q. How far is this land that I have described from Leesville?

A. I would judge it to be about sixteen or eighteen miles—I could likely figure it out.

Q. Is there any railroad running from Leesville to this tract of land?

A. No, sir; I do not think there is any road nearer than the Kansas City Southern, but there may have been a tram road near it. These new roads may possible be nearer to it—I do not know.

Q. Do you know whether or not Mr. Hicks lives [lived] upon this land at any time during the years I have mentioned?

A. No, sir; I do not know that he was ever on it. I never saw him on that land during that time. He may have been on it a number of times, but so far as his family resided, they have been in Leesville since they moved from De Ridder, which I think was in the summer of 1898.

Q. Do you know Nat Wasey?

A. I used to know him.

Mr. Monroe, counsel for defendant, requested the special examiner to warn this witness that in answering the questions given him by the counsel for plaintiff he is to, state only what he knows of his own personal knowledge and not to state anything he might have heard by hearsay or by being told by outside parties.

89 (Special Examiner Jackson, for the reasons stated previously by counsel for plaintiffs, declines to so instruct the witness. These reasons were stated formally by counsel for plaintiff as follows: "Counsel for plaintiff objects to any instructions being given by the examiner for the reason that the examiner has no authority under his appointment to pass upon the competency or incompetency of testimony, and that an instruction would be equivalent to a ruling upon the admissibility of evidence, and that the remedy of defendant in the premises is by proper objection noted in the testimony.")

Q. When did you first see him in that community, in there around Leesville?

A. I am not positive, but I think I saw him from 1898 for several years after that.

Q. Do you know him personally?

A. Yes, sir.

Q. Do you know what his occupation was in that country of your own knowledge or from statements he may have made?

A. I only know what he told me. He said he was representing the Wright-Blodgett people.

(Objected to on the ground hearsay evidence.)

Q. Do you know what became of Nat Wasey?

A. I have heard that he is dead.

Q. State whether or not he was frequently seen around the clerk's office?

A. Yes, sir, probably he would be up there on business once a week or once a month.

Q. What would his business be?

A. Filing papers for record.

Q. What kind of papers?

A. Kind of certificates and deeds, sometimes he would file them and sometimes he would make affidavit and send it to the Wright-Blodgett people at Lake Charles and they  
90 would return it for recordation.

Q. Did he continue appearing at the clerk's office with these papers for filing during the whole time he was in the neighborhood?

A. Why I couldn't tell you. I supposed he had been when I would see him there.

Q. Do you know James M. Boyd?

A. Yes, sir.

Q. Where did he live in 1898, 1899, 1900 and 1901?

A. I think Cora was his postoffice.

Q. What was his occupation during these years?

A. Why I do not know, but he would advertise to prove up homesteads, and I am of the opinion--

(Objected to by counsel for the defense on the ground that the witness was not testified as an expert.)

#### Cross-Examination.

By Mr. Monroe:

Q. You have on one or two occasions been a candidate against Mr. Hicks for office, have you not?

A. Yes, sir.

Q. And on these occasions you have been rather badly beaten by Mr. Hicks?

A. Yes, sir.

Q. Have you ever faced a criminal charge in a criminal court?

A. I never have.

Q. Ever been indicted.

A. No, sir.

Q. Ever been arrested?

A. No, sir.

A. As I understand your testimony it was to the affect [effect] that you thought perhaps you might have been on this Hicks homestead once in your life?

A. Yes, sir, I have been out in that country a number of times.

Q. But you are not prepared to swear that you ever on

this particular 160 acres described as in N. E. quarter Sec. 8, Twp. 2 N., R. 5 W.?

91 A. No, sir, I never took the numbers and run it out. I have only been in the vicinity.

Q. You have said that you thought Mr. Hicks moved into Leesville in 1898. How do you fix that date? Might it not have been in 1897 or 1895?

A. I fix it from my recollection in 1898. I was at work in the Sheriff's office when he first moved to town. That is my recollection.

Q. It might have been in 1899?

A. My recollection is it was 1898?

Q. You was working for the Sheriff in 1899?

A. Yes, sir.

Q. It might have been in that year?

A. My recollection is that—that is the only way I know how to answer that question—that it is my recollection he moved there about July 1898.

Q. And you fixed that date because you were working for the Sheriff at that time?

A. I fixed it by that and what intellect I have. It is simply my recollection. I had no interest in it whatever.

Q. Just fixed it flatfooted and irreticably in your imagination?

A. That is my recollection.

Q. No other date you have that you can fix it by?

A. No that I have, no, sir.

Q. Have you ever had any words with Mr. Hicks over this election?

A. No, sir.

Q. You said that Mr. Hicks was away from home in the summer of 1900 and stayed away three or four months. Are you prepared to say that he stayed away four months?

A. No, sir.

Q. Are you prepared to say that he stayed away three months?

A. No, sir.

Q. Are you prepared to say that he was two months in Hot Springs?

92 A. No, sir. He stayed somewhere three or four months—I kept no date of when he went or when he returned.

Q. Are you prepared to swear that Mr. Hicks during the year of 1898 was never on the N. E. quarter of Sec. 8, Twp. 2 N., Range 5 W.?

A. By no means. He may have been on it a dozen times.

Q. Are you prepared to swear that he did not build on a residence and cultivate the land on those four sections during that year?

A. I am not.

Q. Are you prepared to swear that he did not continue to cultivate that land in 1899?

A. No, sir.

Q. Are you prepared to swear that he did not continue that land in 1901?

A. I am not.

Q. Are you prepared to swear that he did not keep up his home there during 1898?

A. I am not.

Q. Are you prepared to swear that he did not keep up his home there during 1899?

A. I am not.

Q. Are you prepared to swear that he did not keep up his home there during 1900?

A. I am not.

Q. Are you prepared to swear that he did not keep up his home there during 1901?

A. I am not.

Q. How far did you say that land was from Leesville?

A. I think about sixteen or eighteen miles something like that—

Q. During the time you were in the Sheriff's office, which I understand was up to April, 1900, did you keep any check on what Mr. Hicks did?

A. Pretty close. He was at work for Smart and Winfree at the time, and I used to buy goods for the jail, and  
93 he would bring the bills over for me to O. K. to present to the police jury for payment.

Q. He would bring the bills over about once a month?

A. When the police jury met.

Q. About how often did they meet?

A. I think quarterly.

Q. About four times a year?

A. Yes, sir, and when they had called meetings.

Q. Then you saw him about four times a year?

A. Yes, sir.

Q. Did you not know that he went back every night to the N. E. 1/4 of Sec. 8, Twp. 2, N Range 5 W.?

A. No, sir.

Q. Are you prepared to swear that he did not go back there every night?

A. I am not.

Q. Do you know what he did every night during 1900 and 1901?

A. No, sir.

Q. Are you prepared to swear that he did not go back there every night?

A. No, sir.

Q. Are you prepared to swear that some of his children were not working on his homestead there during the years of 1899, 1900 and 1901?

A. No, sir. I am not prepared.

Q. You said you knew Nat Wasey?

A. Yes, sir.

Q. Did you know him well?

A. Pretty well.

Q. Were you on good terms with him?

A. Perfectly good.

Q. You said he told you he was representing the Wright-Blodgett Co.?

A. Yes, sir.

94 Q. When did he tell you that?

A. When he would bring matters in there to be attended to he would give instructions as to what to do with it to forward it to, I think he would always say, the Wright-Blodgett Company of Lake Charles.

Q. Now this is a matter of some importance, and I wish you would be careful—I wish you would say if you are prepared to swear that Mr. Wasey ever told you to send anything to the Wright-Blodgett Company at Lake Charles?

A. Yes, that is my recollection—to Wright-Blodgett. I think that is the terms he would use—sometimes to Mr. Kelly?

Q. That is all he said to you—just that?

A. That is all would say concerning that business.

Q. That is what I mean.

A. That is what I mean.



Q. When Wright-Blodgett or Mr. Kelly bought from these homestead people that he told you to send some deeds to Lake Charles?

A. No. Whatever instructions he gave me to send to the Wright-Blodgett people at Lake Charles—that is the language he used, in my recollection.

Q. When was the first time he ever had such conversation as that with you?

A. I am not sure. I think though it was during the year 1900.

Q. Are you prepared to swear that?

A. That is my recollection.

Q. How do you fix it as 1900? How do you know it was not 1901?

A. Because I went to work in the office in the spring of 1900.

Q. What month was it?

A. I could not say positively.

Q. Was it in March?

A. I could not say positively.

A. May be it was in May or June?

A. I could not say.

Q. Or may be in July?

A. It was not as late as July.

Q. Well how do you fix that date?

95 A. Why, sometime during the year 1900.

Q. Are you prepared to swear that it was six months after you went into this office that Mr. Wasey had any such conversation?

A. No, sir, I am not sure that I could fix the time definitely.

Q. It might have been in 1901?

A. Sometimes and at various times he would give instructions as to what to do with matters he filed in the clerk's office.

Q. And how long did you work in the clerk's office?

A. I worked there in the spring of 1900, until July or August, 1903, at that time.

Q. That is all the conversation you had with Mr. Wasey in regard to the matter?

A. I think so, concerning the business he had done there. I would always talk with him when he came up there. But just whatever business he wanted done he would give instruc-

tions. I never asked pointedly as to what he was doing. It was not anything new.

Q. You never asked him pointedly whose employe he was in?

A. No, sir.

Q. He never told you whose employ he was in?

A. No, sir, he would just tell me whatever it was he wanted done.

#### Re-direct Examination.

By Mr. Mills:

Q. About how often would Mr. Wasey be [be] in the clerk's office, along about the time you mentioned?

A. He did not have any regular time.

Q. About how often—was it frequent?

A. Sometimes every week or ten days, and sometimes not more than every two months.

Q. Did not he ever give you any instructions to send papers or matters to anyone else besides Wright-Blodgett or Mr. Kelly?

A. No, sir, I do not think he did.

Q. Who is clerk at court at Leesville now?

A. J. J. Hicks.

Q. When does his term expire?

96 A. In April.

Q. Have the candidates been announced? For the next term?

A. Yes, sir.

Q. How many are there?

A. Three.

Q. What are their names?

A. A. G. Winfree, D. O. Craft, and P. P. Lambert.

Q. You are not a candidate for election?

A. No, sir.

Q. Now is Mr. Hicks?

A. No, sir, not for clerk.

#### Re-cross Examination.

By Mr. Monroe:

Q. Mr. Hicks is running for assessor?

A. Yes, sir, his announcement in the papers shows that.

Q. Are you going to vote for him?

A. No, sir, I will not.

Q. Can you swear that Nat Wasey never gave you any papers to record and send to anybody except Mr. Kelly and the Wright-Blodgett Company?

A. No, sir, I can not. Other people may have send deeds to be recorded and attended to by Nat Wasey in the clerk's office during the time I was at work there.

#### Re-cross Examination.

By Mr. Monroe:

Q. Who would pay for the deeds and papers Mr. Wasey would have recorded?

A. We would get a check back from the Wright-Blodgett people at Lakes Charles, signed by Mr. Kelly, I think, generally.

Q. Whose account were those checks drawn against?

A. My recollection is the Wright-Blodgett Company.

Q. And signed how?

A. It seems to me some would be signed by Mr. Kelly and some by Mr. Dickens.

Q. Now I want to ask you during all your terms of office—remember your under oath—did you ever in all the time you were deputy clerk there, did you ever get one single  
97 check from the Wright-Blodgett Company?

A. I am not sure.

Q. Now I want you to answer and be sure?

A. I could not if I was to be hung. It was sent back part of the time signed by Mr. Dickens and part of the time by Mr. Kelly.

Q. Did you ever get one signed by the Wright-Blodgett Company. Now remember you are under oath?

A. I do not recollect.

Q. Do you dare to stand there and swear that you ever got one signed by the Wright-Blodgett Company?

A. No, sir, I do not.

Q. What did you do it for a while ago?

A. I do not know. It was payed by the Wright-Blodgett people, the deeds were recorded to them and sent to—I think we usually addressed them to the Wright-Blodgett people at

Lake Charles, and checks were sent back for the payment of the fees generally by Mr. Kelly or Mr. Dickens. The deeds were recorded in the name of the Wright-Blodgett Company, Ltd.

Second Re-direct Examination.

By Mr. Mills:

Q. Do you know what a corporation is?

(Objected to as irrelevant.)

A. I think I reasonably understand it.

Q. Well is it possible for a corporation to sign anything?

A. Well I do not know that.

Q. These checks that you say would be signed by Mr. Dickens or Mr. Kelly—were they signed in their names alone or by them for somebody else?

A. I do not recollect. The check was in payment of the bill at the time the deed was recorded for the Wright-Blodgett Company, Ltd. They were good and we could cash them at the bank.

Second Re-cross Examination.

By Mr. Monroe:

Q. Now, I would be greatly pleased to get you to swear, Mr. Winfree, that the names of the Wright-Blodgett Company was signed to any check, per anybody, on any check that passed through your office?

A. I cannot do it, sir.

(Signed) W. A. WINFREE.

98 In United States Circuit Court, 5th Circuit, Western District of La., at Shreveport.

United States

vs.

No. 382

J. J. Hicks and the Wright-Blodgett Company, Limited.

J. B. Monroe, A. S. Mitchell, Counsel for Defendant.

M. C. Elstner, U. S. Atty., E. P. Mills, Assistant, Counsel for government.

\* \* \* \* \*

100 In U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, at Shreveport.

United States

vs.

Case No. 382

J. J. Hicks, and the Wright Blodgett-Company, Ltd.

It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken.

Counsel for complainant offered in evidence certified copy of deed of Jos. J. Hicks to the Wright-Blodgett Company, Ltd., of date July 10, 1901, and asked that same be filed and marked "Exhibit A."

Counsel for defendant stated he would make no objection to this copy for any formal reason.

101 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

## TESTIMONY OF A. G. WINFREE.

Mr. A. G. WINFREE, a witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Elstner:

1. Did you know Nat Wazey?

I did.

2. State whether or not in connection with the Wright-Blodgett Co., Ltd., he exercised a general supervision over the purchase of lands in their interest.

I do not know of my own knowledge. I can state that I recognize Mr. Wazey as such. It was so understood throughout the community, and I so understood that he represented the Wright-Blodgett Co., Ltd.

3. From what circumstance that came under your personal observation were you led to the conclusion that Nat Wazey represented the Wright-Blodgett Co. in the investigation of lands and in securing their purchase? State your personal observations, conduct of Mr. Wazey, what he did and all you know about it.

Well, at the time Mr. Wazey was buying lands in Vernon parish I was running a livery stable and at the times when he would come to Leesville he would stop with me; consequently we became well acquainted and I knew at the time that he was

102 purchasing land throughout the parish by various conversations and transactions I had heard of, but still I don't know that I was ever a witness to any transaction he made for these people. It was only current talk throughout the community.

(Counsel for defendant objects to above testimony on the ground that it is mere hearsay.)

4. State whether or not Mr. Wazey informed you of the purchase of any lands that he had made for the Wright-Blodgett Co.?

I can not answer that question. I do not really know of any particular instance. It is too far back to remember.

5. Do you know whether or not from any statement he

ever made to you that he represented himself as the agent of Wright-Blodgett Co. in the purchase of lands?

No, sir; I really don't know that he did.

6. Did you ever see him at Leesville acting in the capacity of attesting witness in any of these purchases that appear on record in this case?

I did not. I was not in position to know those facts.

7. Do you know where Mr. Nat Wazey lived?

I am of the opinion that he lived in the southeast portion of the parish.

8. How far from Leesville?

About 25 or 35 miles. I was never at his place and really do not know that he had a place; only I know that he spoke of his family down there.

9. About what is the distance from Leesville to Lake Charles?

About 70 miles.

10. Did Mr. Wazey, or did he not, have any business occupation in the town of Leesville?

None that I know of.

11. Did he have any mercantile establishment or office in the town of Leesville?

Not to my knowledge.

103 12. How often would you see Mr. Nat Wazey in the town of Leesville?

I can't remember, but he was there frequently. Possibly weekly; I don't know for certain.

13. You did not see him there often enough to suggest that he was engaged in any permanent or daily business in the town of Leesville?

No, sir. If he had any business connections in the town of Leesville I was not aware of it and am not aware of it at the present time.

14. You live in Leesville?

All of my life.

104 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony

will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

### TESTIMONY OF A. N. MAYO.

A. N. Mayo, a witness in behalf of complainant, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Elstner:

1. Mr. Mayo, did you know Nat Wazey?

I did.

2. Do you know whether he is living or dead?

I heard some year or two ago that he was dead.

3. Has there ever been a succession of Nat Wazey open in the Parish of Calcasieu?

I believe not, for I have a record of all probate matters in my office and I cannot recall now of having seen such probate proceedings.

4. Do you know that several years ago Mr. Nat Wazey left the Parish of Calcasieu and was supposed to have been taken to a sanitorium?

It was current report at Lake Charles.

5. How long had you known Nat Wazey prior to his leaving Lake Charles?

Must have been 10 to 14 years.

6. During the latter part of his residence in Calcasieu Parish what business was he engaged in?

(Counsel for defendant objected to this witness stating anything from hearsay, but confining himself to his own knowledge.)

105 I think I can say it was real estate business. It was about the only thing I knew of his doing.

7. Do you know anything of his connection with the Wright-Blodgett Co. in the purchase of land without reference to any special tract, but in a general way?

It was currently, or generally, stated and I have understood



that he would purchase timber from the Wright-Blodgett Co.; make purchases for them of lands.

(For the purpose of emphasis counsel for defendant objects to this testimony on the ground that it was hearsay.)

8. Have you ever had any conversation with Mr. Nat Wazey himself with reference to his engagements, or employments, or connections with the Wright-Blodgett Co.?

No, sir.

9. You kept a record of the lands in Calcasieu Parish, did you not, in your office?

I have abstract of title records. I have them now.

10. Do you know of any investigations made by Mr. Nat Wazey of the records of lands in Calcasieu Parish for the purpose of making purchases for the Wright-Blodgett Co.?

No, sir.

11. Now, Mr. Mayo, you have stated that it was generally understood that Mr. Nat Wazey was acting in the interest of the Wright-Blodgett Co. in the acquisition of timber lands. Now state just what circumstances led you to make that statement.

(Objected to by counsel for defendant for emphasis as being mere hearsay.)

Not being able to recall any transaction in which any purchase of land as made by Mr. Wazey was for the specific account of Wright-Blodgett Co., but only from the general statement that purchasers made from time to time either for their own account or Wright-Blodgett Company, I have no way of linking any particular transaction as being for the Wright-Blodgett Co. I so often prove up deeds, titles to real estate. Mr. Wazey was in and out of my office from time to time, but what transactions might have been for the Wright-Blodgett Co. I cannot say.

12. Do you know where Mr. Wazey lived several years prior to his leaving Lake Charles?

He lived in Lake Charles on our principal street.

13. Was Nat Wazey a married man?

Yes, sir; twice married.

14. Prior to his death, or prior to his leaving Lake Charles, how long had he been a citizen and resident of Lake Charles?

I don't remember the year he moved away from Lake Charles. He came to Lake Charles about 1886, I should say, and left there in the latter part of the '90's, as well as I can recall.

15. After leaving there in the latter part of the '90's did he again return to Lake Charles and make his residence there?

I think not, sir.

16. Do you know where he lived after leaving Lake Charles up to the time of his leaving Calcasieu Parish?

I do not know.

17. Do you know anything of his having a residence in the Parish of Vernon?

Only current report.

18. Did his family leave Lake Charles at the time you state in the latter part of the '90's at the time he himself left there?

I do not know, sir.

#### Cross-Examination.

By Mr. Monroe:

1. You say you know that Nat Wazey left a half-brother living in Miss.?

I don't know but what this half-brother was in Lake Charles at the time Mr. Wazey left there, but he is probably now in Mississippi.

2. What is his name?

A. Frank B. Clingo.

3. Did Nat Wazey have any other brothers or sisters by name of Clingo?

I never heard of them.

107 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

## TESTIMONY OF BEN M. FOSTER.

Mr. Ben M. Foster, a witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Mills:

1. Where do you live?

Lake Charles.

2. How long have you lived there?

All my life.

3. What business are you in?

Real estate.

4. How long have you been in that business?

Since 1898.

5. By whom were you employed in 1898?

I was in business with my father from 1898 to 1901.

6. Did you change your employment at that time and go in with someone else?

About the fall of 1901 I went in with Wright-Blodgett Company.

7. Do you remember the exact date?

No; it was in the fall. I don't remember the exact date.

8. At what place were you employed?

At Lake Charles.

9. Did they maintain an office there?

108 They did.

10. In what capacity were you employed by them?

Looking after the office generally and keeping books.

11. What was the extent of your authority; the nature of your work?

I was under Mr. Kelly.

12. When you say "looking after the office generally" you mean attending to the business of the office?

Yes, sir; and making my reports to Mr. Kelly.

13. How large was the office force of the Wright-Blodgett Co. at that time?

Just one.

14. You were the only man in the office?

Yes, sir.

15. Yet you say you were under Mr. Kelly?

He did not stay in the office at the time.

16. About how much time was Mr. Kelly there, roughly speaking?

During the first part of the time I was in the office Mr. Kelly was in for several weeks. He generally stayed several weeks at a time. He came about every three or four months—sometimes oftener.

17. During his absence you had full charge of the office work?

Yes, sir.

18. Did you know Nat Wazey?

Quite well.

19. Was he in the employ of the Wright-Blodgett Co. when you went to work for them?

Yes, sir.

20. In what capacity was he employed?

He was a woodman.

21. What do you mean by a woodman?

(For emphasis the objection of irrelevancy was here made by counsel for defense on ground that the employment of this witness, not having taken place until the fall of 1901, nothing that he knows can be relevant to any act or allegation set forth by the pleadings at issue in these cases.)

109 Well, he was employed to inspect timber for the company and make reports on it.

22. What else did he do?

At that time the company's holdings were scattered. They were trying to "block up."

23. What do you mean by "block up"?

They were consolidating their holdings.

24. They would buy lands in between lands they already owned?

Yes, to make their holdings contiguous.

25. How many men were employed as woodmen?

No one else. That is, regularly.

26. Do you know whether there was any record in the office of this company that showed that the lands upon which Wazey would report had been gone over or cruised at any other time?

When the company bought they had the cruisers report on what they bought.

27. Was there any record showing a prior report to that made by Wazey?

In some cases yes. I remember in some of the townships where the company bought they had a cruisers' report on nearly everything in the whole township. That was for the general office record, showing where was the good timber land.

28. These reports made by Mr. Wazey were made for what purpose?

The purpose of buying. Wazey would make his report as to how much timber there was on the land, which gave the company a good idea how much to pay for the land.

29. What investigation would be made by the company as to titles of these lands that Mr. Wazey would report on?

Well, in cases where there was any doubt at all or any long chain of title we had abstract made. In other cases where there was a patent or receiver's receipt to go by we simply took that first record.

30. It is a fact that the company would buy upon  
110 the report of Mr. Wazey as to the timber?

(Objected to as leading.)

And a fact that where there was a receiver's receipt for the land or the patent they would go by it?

If there was just a receiver's receipt or patent and no other chain of title and if there was timber on the land the company felt justified in buying it.

31. In these cases when Mr. Wazey would report as to the status of the title to the timber on land and as to whether the land was held under a receiver's receipt or patent would any other investigation be made before the company purchased?

No, except that usually—and, I should say, in almost every case—either the receiver's receipt or the patent was sent to the office.

32. But they would send no one to the land to make investigation?

We would send no one from the office if we had a receiver's receipt or patent, any more than we would send anyone to Alexandria or to Lake Charles to investigate as to an abstract.

33. The [then], I understand your testimony to be that the company would buy in cases where there was a patent or receiver's receipt upon the report of Mr. Wazey?

Yes, sir; that is a fact.

34. Without any further investigation?

Yes, sir.

35. Was Mr. Wazey located in Lake Charles, or did he live in the country where he bought timber?

He lived in the woods.

36. Was it part of his business to live in the woods and go around where the land was?

(Objected to as leading.)

He could find out thing at less expense by living in the woods.

37. Where did he spend his time?

111 In the woods.

38. Now, Mr. Foster, from your experience in the office and your examination of the records and familiarity with them and from your conversations with Mr. Kelly and with Mr. Wazey, do you know how long prior to the time you went into the office Mr. Wazey had been employed by the company?

(For emphasis the objection is here made by counsel for defendant that the question calls for secondary and hearsay evidence which is inadmissible and is hereby objected to.)

I don't know just how long. I know it was some years before I went in. Possibly, maybe three, years.

39. Do you know in what capacity he had been employed prior to the time you went into office?

(Same objection here made by counsel for defendant.)

I don't know, but I suppose it was in the same way.

40. For what reason do you suppose it was in the same way?

For the reason that no change was made in the office when I went in, that I know of.

41. Did the records of the office show in any way what his employment had been?

Practically the same.

42. Just the same as afterwards?

Yes, sir. He got his salary just the same as afterwards.

43. In what way would these lands bought through Wazey be paid for?

Currency, usually.

44. Who would do the paying?

Most of the time Mr. Wazey; once in a while Mr. Kelly, and occasionally I went up. Sometimes other people would pay when they bought through some other agent.

#### Direct Examination Continued.

By Mr. Elstner:

45. You know the domicile of the Wright-Blodgett Company?

Saginaw, Wesside, Michigan.

46. Firm or corporation?

112 A partnership association, so the deeds all recite.

47. Do you know the individual members of that partnership association?

I know some of them.

48. Give their names.

I can only state positively as to the offices—Mr. Davis, Mr. Blodgett and Mr. Stork.

(For emphasis the objection is here made by counsel for defendant that the testimony is irrelevant.)

49. Do you know that any of those whose names are mentioned by you came to Lake Charles and in person supervised or conducted the affairs of the partnership?

Mr. Stork came down about one [once] a year usually. He always stayed at the office.

50. Do you know that Mr. Stork at any time went out and made personal investigations of the lands to be acquired by Wright-Blodgett Co.?

I don't believe so. Not to my knowledge.

51. Who exercised general supervisory control over the affairs of the Wright-Blodgett Co. in Louisiana?

Mr. Michael H. Kelly.

52. Do you know about what time Wright-Blodgett Co. began their operations in Louisiana?

In 1898, I believe.

53. What time did Mr. Kelly assume supervision of the affairs in Louisiana?

I do not know. I suppose when the company came into Louisiana. Mr. Kelly had charge when I went in in 1901.

54. You don't know how long prior to 1901 he acted in that capacity?

I don't know, but I suppose from the beginning.

55. How long prior to 1901 had you known Mr. Kelly?

Two years or more.

56. Where?

In Lake Charles.

57. You saw Mr. Kelly frequently prior to 1901?

113 Yes, sir; I saw him often. Our offices were adjoining. That is, there was only a door between his office and that of my father.

58. Were you ever in his office prior to 1901, either socially or otherwise?

Yes, sir.

59. Did you know from your visits to his office and from the observations you there made in what business he was engaged prior to 1901?

Yes, sir. He managed the business of Wright-Blodgett Company.

60. Did you know him as early as 1898?

That is so far back I hardly remember, but I believe that is about the time I first saw him.

61. From that day on from your observations you know he was engaged in connection with the Wright-Blodgett Co.?

Yes, sir.

62. Do you know whether or not Mr. Kelly visited the lands that were subsequently purchased by the Wright-Blodgett Co. prior to their purchase?

I don't know whether he saw all of them, but I suppose Mr. Kelly must have looked over the main purchase before he purchased. (By main purchase meaning original purchase about 1898 of the Fairbanks and Head and other lands).

63. Do you know of Mr. Kelly's going with Mr. Nat Wazey at any time to any of the lands purchased at the suggestion of Mr. Wazey in order to look over them?



Yes, frequently he went with Mr. Wazey into the woods to verify his estimates and things of that kind.

64. Do you know where Mr. Nat Wazey had a homestead where he lived in the woods?

Yes, sir.

65. Did you ever visit him there?

Yes, sir.

66. Did Mr. Kelly ever go with you there?

114 Yes. I made one or two trips with Mr. Kelly; maybe several.

67. Ever stop at Mr. Wazeys' all night?

Several times.

68. Mr. Kelly also?

Yes, sir.

69. Were you ever present at the time that Mr. Wazey paid for any of these lands?

Yes; several times.

70. Now, these deeds, without taking them up separately, specify that there was so much paid in cash as a consideration of the purchaser from the man who held the final receipt—that is, the entryman. At the sales at which you were present did you see the money paid?

(At this point counsel for defendant asks counsel for complainant if, in the question above he was referring to the lands in controversy in the bills now before the Court, and in reply counsel for complainant substitutes the following question for Q. No. 70.)

71. Do you know anything, of your own knowledge, in regard to the sales of the lands by the homesteaders to the Wright-Blodgett Co. by being personally present and witnessing the sales prior to what date?

Late in the fall of 1901. I think in the month of December; might have been November.

72. At no sale prior to 1901 were you present?

No, sir.

Direct Examination Continued.

By Mr. Mills:

73. Do you remember the numbers of the lands on which Wazey lived?

Section 28; Township 1 South; Range 5.

74. You are positive as to that?

Yes, sir.

75. When was it that you visited him?

Oh, I don't know how many times.

76. Was Wazey living there with his family?

Yes, sir.

77. He had his household goods?

115 Yes, sir. He made his home there.

78. Do you know how long he lived there?

When was the first time you saw him there?

Soon after I went in with the company, within a few months. He had just moved there from Slabtown.

79. How long do you remember that he lived out in the woods?

He was still living there when I left the employ of the company. The place was called Sigler.

80. When did you leave the employ of the company?

The 1st of March, 1904.

81. Did he live at any other place during that time?

No, sir.

#### Cross-Examination.

By Mr. Monroe:

1. These visits which you say you made to Mr. Wazey in company with Mr. Kelly were all made after your employment with the Wright-Blodgett Company in 1901, and the earliest visit you remember of making was some month or two after your employment?

Yes, sir.

2. If I understood you correctly, you stated the company had caused to be made a general cruisers' estimate of the timber in that section of the country?

No, I did not state that they caused the cruise to be made, but I believe they had such a cruise from Mr. J. D. Lacy & Co.

3. Who are J. D. Lacy & Co.?

Real estate men with an office in New Orleans.

4. Do they or do they not make a business of making these timber cruises or estimates?

It is their principal business, or was at that time.

5. How do they stand in the business and how are their estimates considered by timber people?

Of the best.

6. You are connected with the timber business  
116 to some extent? And have been for some time?

A. Yes, sir.

7. Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacy & Co. without making any special investigation themselves?

That is the usual case; the usual method of doing business.

8. You say Wright-Blodgett Co. had the estimates of J. D. Lacy & Co. for that part of the country?

Yes, sir. I think it was made before their original purchase and I think they got their figures from Lacy for the original purchase.

9. What acreage was their original purchase?

I have forgotten now.

10. Approximately?

Something more than 100,000 acres.

11. During your incumbency of office under Wright-Blodgett Co. did any law firm examine and pass on titles for them?

Yes, sir; Pugo & Moss of Lake Charles.

12. What was the custom of Wright-Blodgett Co. relative to examination of titles by Pugo & Moss?

They turned all abstracts over to them for their opinion before they were sent to the home office.

13. Did they examine the title before the sale was actually concluded?

Well, in some cases they did and in some cases they did not.

14. Was it the custom of the office to submit the title to Pugo & Moss for examination, have them approve it and then pass the deed and record it and then submit the entire abstract with deed to them and have them write their approval on it?

That was the case during the latter part of the time I was in office, but when there was a patent or a receiver's receipt sometimes we bought and paid for the land before the title was approved.

15. I take it that in all cases where Pugo & Moss  
117 gave a written opinion on the back of an abstract that the title had been examined before purchasing and subsequently had been submitted to them for opinion and written approval?

That is a fact.

16. Was J. M. Boyd in the employ of Wright-Blodgett Co. during the years 1901-02, or prior to those years?

He was never in the employ of the company while I was with them and I don't believe before I was with them.

17. The Wright-Blodgett Co. bought considerable land out in that neighborhood, did it not?

Yes; more than 50,000 acres, I suppose.

18. Was it not the custom of Wright-Blodgett Co. to insist upon the delivery to them of a final receipt or patent before paying for land?

Yes, it was always the case.

19. Their instructions to the office were to buy nothing unless they had either a receiver's receipt or a patent?

Well, unless in the case of a complicated title; one that had passed through many hands. Then we would not insist upon receipt or patent. But if the only instrument was a patent or receiver's receipt we always got the one or the other unless it might be where the company bought only a part of a homestead and then, although we got the patent, we returned the patent to the entryman. But in case of a receiver's receipt we got it. That was always before the sale was closed.

20. Mr. Foster, you spoke of certain handling of cash in purchases by Mr. Wazey, and in asking some of the questions attorney for complainant used the expression these lands." It is important to find out what lands were being referred to. You would not, for instance, in answering those questions have been referring to any deed which was made prior to the time you went into the employment of the Wright-Blodgett Co. in 1901, would you?

No, sir.

118 21. The testimony of that subject was relative to some transactions subsequent to that date?

On lands generally during the time I was with the company. Nothing prior thereto.

22. When you went into the employ of the Wright-Blodgett Co. was anyone else purchasing lands and timber for them besides Mr. Wazey?

Yes; Mr. Wingate at Leesville bought some, and Lewis Melder of Glenmora bought some.

23. You stated on your direct examination that you supposed that Mr. Wazey had been buying before you went into the employ of the Wright-Blodgett Co. in 1901. Did that sup-

position apply equally to these other gentlemen who were purchasing?

Yes, sir.

### Redirect Examination.

By Mr. Elstner:

1. Did you have in the office of the Wright-Blodgett Co. in Lake Charles a general map showing the pine lands in the several parishes around?

We did.

2. Did that map show the lands owned by individuals and also the lands then belonging to the public domain of the United States?

No, the maps showed the ownerships by private corporations of the principal big holdings throughout the pine belt.

3. Then the Wright-Blodgett Co., or its officers in Lake Charles, had no knowledge of the pine lands in Vernon, Rapides and Calcasieu Parishes except in so far as they were owned by corporations or individuals?

The white places on the map would show that other corporations did not own that particular land.

4. Then you would take it that all the lands not appearing on the map as owned by corporations or individuals were public lands?

No, because we did not mark up the individual  
119 lands. If there was an individual ownership of, say, a quarter section we did not note it on the map.

5. Did the Wright-Blodgett Co. ever keep maps or records of any kind in its office for a knowledge of the lands belonging to the public domain in these parishes?

Yes, from time to time we got such records. Not generally, but in special cases we have seen maps showing the ownership of all of the holdings and that which was not colored was public domain land. In other words, in the company's office, in "blocking up" their lands, we tried to know who owned all of the intermingling lands.

6. As a matter of fact, the value of pine lands depends to some degree on the compact forms in which that land is located, does it not?

Yes, sir; and a big degree, too.

7. Was it not the purpose of the Wright-Blodgett Co.,

knowing this fact, to try and secure as large a tract of land in compact form as practicable?

Yes, sir.

8. Did they not make inquiries, both from maps and from personal investigations, with a view of ascertaining the location and ownership of lands that would facilitate them in carrying out this object?

They did.

9. In doing this would they not necessarily ascertain lands in juxtaposition to their own that were within the public domain?

They did.

10. Did Mr. Kelly and Mr. Wazey, or other representatives of the Wright-Blodgett Co., frequently visit their holdings?

Mr. Wazey was on the ground all the time; Mr. Kelly made periodical trips, and I have been on it several times.

11. With reference to the trips made, what would you call periodical trips?

Every time he would come down, which was every three or four months.

12. When Mr. Kelly was away you were in charge of the office?

Yes, sir.

13. During his absence did you exercise the same kind of supervision over the affairs of the company that Mr. Kelly did in person when present?

No; I referred everything to Mr. Kelly.

14. I do not mean did you exercise the same degree of control over the affairs of the company, but did you frequently visit the holdings of the company in order to ascertain the existing condition during his absence?

I did.

15. You had on the map of the company, and from that map could determine, the localities visited by you when going over the holdings of the company?

For emphasis the objection is here made that this testimony is totally irrelevant for the reason that witness has repeatedly stated he was not employed by the company until 1901 and subsequent thereto, and that all the purchases in these cases by Wright-Blodgett Company were prior to that date.

16. Whenever you visited these holdings did you have an opportunity of becoming acquainted with the people living in the community?

To a certain extent, yes.

17. Did you have an opportunity of seeing in what kind of business they were engaged?

Most of them were farmers.

18. Did you have any opportunity of observing or judging of their apparent financial condition?

They were just like the ordinary piney-wood folks.

19. Do you know in what amounts, if any, money was sent from Lake Charles to Nat Wazey at Glenmora?

Money was sent there only once or twice, possibly three times, to my knowledge.

20. Do you know in what amounts?

I do not recall; something like \$1,000.00, possibly more.

21. Do you know where the Wright-Blodgett Co. kept, either as a firm or through their agents, their bank account in the City of Lake Char.?

They had no bank account in Lake Charles.

22. Did Mr. Kelly have a bank account in Lake Charles?

He did.

23. At what bank?

121 Calcasieu National Bank.

24. Do you know whether Mr. Kelly kept that money on deposit there or received the money in that bank as his own individual funds or as an agent for the Wright-Blodgett Co.?

I suppose that it was the Wright-Blodgett Co.'s money.

(For emphasis objection is here made that this is merely hearsay.)

25. Why do you suppose it was Wright-Blodgett's money?

Because it was used for the company.

26. Can you state whether or not on three or more occasions that out of that fund as much as \$2,000.00 at a time had been sent Nat Wazey for lands acquired?

Yes, but I don't know how many times; several times. And I don't remember the exact amounts. There might have been more money than that sent to him at times. Usually he got enough money to pay for the lands he had written in about.

If several sales had been made he might have gotten as much as \$5,000.00 at one time, but if only one sale it would have been correspondingly less.

27. Do you know of any money being sent to Wazey at any time that was used by him for the payment of the purchase price of lands that were held by the entrymen under final receiver's receipt and was paid to the entrymen by Wazey and the final receipt turned over to Wazey and then subsequently delivered to the representatives of the Wright-Blodgett Co. at Lake Charles?

(By way of emphasis the objection is here made that any answer to this question which does not pertain to land described in the bills in one of the cases now before the Court will be irrelevant and that any answer which may pertain to lands described in one of the bills will be irrelevant as to the other eight, which objection is here made for emphasis.)

Yes, sir.

28. Do you know how often that occurred?

(Same objection made here as to No. 27.)

Every time they bought on final receipt.

29. You have been in the land business and Mr. Kelly has been in the land business for a long time. Are you familiar with the homestead laws of the United States?

122 (Objected to as irrelevant.)

I am.

30. About how far from Lake Charles are the lands held by the Wright-Blodgett Co.?

You mean "were held," do you not? They don't own any now?

31. Yes, sir. About how far from Lake Charles were the lands known as the lands of the Wright-Blodgett Company?

About sixty miles.

32. About how far from a railroad?

About twelve miles, the nearest of them. They had some scattered lands within four or five miles of the Watkins road.



## Re-examination Continued.

By Mr. Mills:

33. Who held the same position occupied by you prior to the time you went to work for the Wright-Blodgett people?

(Objected to for emphasis as hearsay.)

Thomas E. Dickens.

34. How do you know he was employed by them?"

I have seen him there. Our offices were next to each other.

35. For how long a period was he employed by them prior to the time you went to work for them?

A couple of years.

36. Was he the only man in charge of the office or were there other men in the office with him?

He was the only one.

37. Where is he now?

I don't know.

38. Mr. Monroe has called your attention to the fact that a cruise or report had been made on lands in this territory about 1898. In cases where lands were bought upon the recommendation and report of Mr. Wazey what would govern the action of the company, the report of Mr. Wazey or the record of the cruise?

As a general thing there would not be much difference between the reports, but if there should be Mr. Wazey was sent back to see if an error had been made.

39. If he stated that no error had been made in  
123 the report what action would be taken?

His report would be accepted.

## Recross-Examination.

By Mr. Monroe:

1. About how often (during the course of your employment) in a year would you get on any individual forty belonging to the Wright-Blodgett Co.?

I should say on an average of every three or four months.

2. That was on the holdings belonging to them?

Yes, sir; to the Wright-Blodgett Company.

## 2nd Exam. of MR. BEN M. FOSTER.

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## Direct Examination.

By Mr. Elstner:

1. Mr. Foster, did you at any time deliver money in person to Mr. Nat Wazey for the purpose of purchasing land for Wright-Blodgett Co.?

A. I did.

2. About how many times?

A. Several times. I don't remember how many times.

3. State about what amounts.

A. Usually about \$1,000.00 at a time. I have delivered as high as \$5,000.00 at a time.

4. Within what period?

A. During the time I was with the company in the fall of 1901 to the fall of 1904.

5. Where would you deliver this money to Wazey?

A. Sometimes in Lake Charles. Sometimes in Sigler. Maybe once or twice in Glennora.

6. You delivered it as a representative of Wright-Blodgett Company?

A. Yes, sir.

## Cross-Examination.

By Mr. Monroe:

1. As I understand, Nat Wazey would go out through the country and get price on various lands, would bring them back and submit them to the Lake Charles office of Wright-Blodgett Co., the Wright-Blodgett Co. would then have the titles passed upon and if the prices were all right and the titles correct would instruct Mr. Wazey to purchase and would give him money to complete the purchase with. Is that correct?

A. That is correct.

2. And in all those cases was the title examined before the act of sale was actually passed?

A. In most cases. There might have been a few cases. If you mean by attorneys, I will say "In most cases"; if you mean by the office, I will say "In all cases."

3. In one or two cases when Wazey broke through that rule he was held personally responsible for the purchases, he having purchased without submitting back to the office first?

125 A. Yes, sir; that is a fact.

4. When you were last on the stand you stated

that at some time during your holding of office under the Wright-Blodgett Co. that it became customary when Wazey submitted simply a final receipt to authorize the purchase without having the abstract made and submitted to attorneys. Was that the custom when you first went into office?

A. No; when I first went into office it was the custom, and, I believe, instructions, that all titles had to be examined by Pugo & Moss before any deeds were passed.

5. And after you went into office they having always approved final receipts, you fell into the habit of not submitting final receipts to them any more. Is that correct?

A. Yes; final receipts and patents. If titles were based on final receipt or patent, having been approved before then, we did not go into the trouble and expense of having abstract made to show one item. We put the deed on record and then had abstract made showing title in Wright-Blodgett Co. and then turned it over to the attorneys for approval. That was more as a matter of form.

6. At the time you first went into office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pugo & Moss for approval?

A. Yes, sir; all titles.

6. Mr. Moss testified this morning that it was the opinion among local members of the bar at that time that purchasers were justified in buying on a patent or final receipt without further investigation. When you first went into office was any advice of that character given to you by the firm?

A. I don't remember any special advice, but that was my understanding—that either a final receipt or a patent was as good as a title could be.

126 (Counsel for complainant in these cases makes no special objection here to the irrelevancy by reason of the witness being called upon to state the efficacy of the correctness or incorrectness of his conclusions at the time as to questions of law, but rests the right of objection to all testimony taken in this case on the special right specified and agreed to by both counsel for complainant and counsel for the defendant in the beginning of the taking of this testimony, thinking it unnecessary to specifically reiterate the safeguards set forth in this first understanding.)

7. Mr. Foster, you have had some experience as a timber estimator?

A. Yes, sir.

8. When a timber estimator goes on land and estimates timber does he pay any particular notice to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact of how the house is located on the land. Also make a note of the fact of how much has been cleared in order to justify any statement that is made as to the timber.

9. Do you make any statement as to the condition of the house?

A. None whatever—I don't.

10. Do you pay any particular attention to the condition of the house?

A. Not to the house; simply as to how much land is cleared.

11. You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

12. That is the custom observed among all timber estimators?

A. Yes.

13. You stated awhile ago that you had given sums of money of from \$2000 to \$5000 to Wazey in cash. Those sums of money were given him to pay for specific purchases which had been submitted to the office, titles approved and he authorized to buy?

A. In all cases.

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Re-examination.

By Mr. Elstner:

(Counsel for asking if in two or three instances Mr. Nat Wazey made purchases for which the Wright-Blodgett Co. afterwards held him responsible for the reason that they had not been approved beforehand by Wright-Blodgett Co., witness answered that Wazey was charged with those sales.)

1. Was any sum of money withheld from Wazey in order to make him responsible for any errors that might have been made in purchase?

A. Yes, in two or three cases Wazey was charged with

land that he had bought without submitting titles and afterwards we found some discrepancy in the title. That amount remained charged against him (Wazey) until he had titles straightened.

2. Did either of these instances to which you refer apply to purchases made by reason of a final receipt?

A. I don't recollect. I remember that we held, I think, two sales on Wazey's account. But whether on receiver's receipt or something else I don't recall. I think one of them was on account of a defective tax title. But I don't exactly remember.

3. You have stated that you never made any inquiry further than to find the existence either of the patent or the receiver's receipt in cases of that character?

A. No; we always accepted them, except towards the last few months I was in office. That was after the investigation up there by Mr. Ervin, special agent.

4. Then it is not probable that any of the instances to which you refer wherein Mr. Wazey was held responsible for his purchases occurred in cases of either patents or final receipts?

A. I don't recollect the special name that Wazey was charged with.

5. But it was in case of either patent or final receipt?

A. It would have been in either a case of patent or receipt because all titled went back to that.

6. Counsel for defendant asked you if you would, when going upon the lands covered by a final receipt, either  
128 as a timber estimator or for the purpose of viewing the lands, you paid any attention to the character and extent of improvements and you answered no, only to the extent and for the purpose of observing the value of the timber standing on the land at the time.

A. That was the only report we would make. We would notice them generally, but would pay no attention to them. We would consider improvements on timber land as of no value. It was simply timber we were looking for.

7. Are you familiar with the forms used in acquiring title to the public lands of the United States under the homestead laws in making both the five-year proof and the commutation proof?

A. I am; yes, sir.

8. In going upon these lands would you make any investi-

gation for the purpose of ascertaining whether the entrymen had complied with the laws as to entitle them to a final receipt?

A. I never did.

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## TESTIMONY OF H. H. ROCK.

Mr. H. H. Rock, witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Elstner:

1. Where do you reside?

Lake Charles, La.

2. What business are you engaged in?

Banking business.

3. With what bank?

Calcasieu National Bank.

4. Have you with you a statement from your shipping book?

I have the shipping book.

5. I wish you would turn to that book and find any shipments that may have been made to Mr. Nat Wazey from your bank.

The only one I find is on October 7, 1902, a shipment of \$2,000.00 to Glenmora, La., sent by express.

6. At whose instance was that shipment made?

I could not say as to that. I don't remember that far back.

7. Don't your book show?

That book does not show.

8. Have you a book that does show?

Well, unless there was some check given for it it would not. If it was charged to someone's account it would show.

9. Do you know at whose instance that shipment was made?

I could not say positively who ordered the shipment made.

10. Do you know out of what fund it was shipped?

No, I do not know for sure.

11. You have no knowledge out of what funds it was shipped?

No, sir.

12. Was it out of a fund belonging to Nat Wazey personally in the bank?

I don't think so; I could not say positively without looking it up.

13. Is that the only one in that book? Any shipments prior to that time?

I haven't looked clear through the book.

14. I will ask that you take the book and make close examination and find all the shipments that have been made, as shown by that book, from 1898 up to 1903.

The book does not commence until 1902.

15. I will ask why you did not comply with your subpoena duces tecum?

Because that was the first shipping book that we ever used. Our business was so small before that time that we just used our express books as receipt. We did not have a regular shipping book.

16. Did you have any books or records in your bank that corresponded with the book that you produced herein in obedience to the order of the Court?

No, sir.

17. Any records which showed shipments made by the bank prior to the use of this book?

Yes, sir.

18. What do you call them?

Express books.

19. Are they now in possession of your bank?

I don't know just where they are if they are.

20. You don't know whether they are in the possession of your bank or not?

No, sir.

21. Were you in the bank then?

Not prior to 1900.

22. And 1902 is the time you first commenced keeping this book?

Yes, sir.

## TESTIMONY OF C. D. MOSS.

## Direct Examination.

By Mr. Monroe:

1. Mr. Moss, you are an attorney by profession and are a member of the law firm of Pugo & Moss of Lake Charles, La.?

2. Yes, sir.

2. That firm has been practicing law in Lake Charles since sometime prior to the year 1898?

Yes, sir; since 1896.

3. Was your firm employed by the Wright-Blodgett Co. in or about the years 1898 and 1899?

Yes, sir. My recollection is that the employment began about 1899.

4. What was the nature of that employment?

Our firm was employed to pass particularly upon abstract of titles upon lands the company was acquiring in the parishes of Calcasieu, Vernon and Rapides, and also to advise representatives of the company at Lake Charles in reference to the purchase of lands.

5. What was the custom adopted by your good selves and the Wright-Blodgett Company relative to these examinations of title?

Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office after the deeds were acquired from the different owners and these deeds were carried on the abstracts so that our opinions would show our opinion of the titles in the Wright-Blodgett Company. In some cases that I recall there would be two written opinions.

## Cross-Examination.

By Mr. Mills: -

1. When your connection with the Wright-Blodgett Co. began who was in charge of their office at Lake Charles?

Mr. Michael Kelly.

2. Who made arrangements with you for your employment?



My recollection is that Mr. Kelly did. That is my recollection of the matter. He might have had the arrangement approved by the home office.

3. Do you remember when Mr. Ben M. Foster went to work for the Co.?

Mr. Foster went to work for the company at Lake Charles, but I can not give you exact date. To the best of my recollection it was near 1902. I can not state the date definitely.

4. Prior to his employment who was employed in the office of the Wright-Blodgett Company?

Mr. Kelly was in Lake Charles himself at the beginning. After Mr. Kelly was there for some time and returned North Mr. Thomas Dickens was in the office for some months. I can not give you the exact length of time. After Mr. Dickens my recollection is that Mr. David Livingstone, a young man of Lake Charles, was there several months.

5. Where is Mr. Livingstone?

At Lake Charles. And then I think Mr. Foster followed Mr. Livingstone. With reference to the time these parties were in the office I am testifying from recollection. Mr. Kelly and Mr. Stork would know better than I.

6. Who would bring these abstracts and deeds to your office for examination?

When Mr. Kelly was there he would bring them. In his absence Mr. Dickens would bring them, or Mr. Foster, or Mr. Livingstone, as the case might be. If Mr. Kelly was in the office he usually brought them in.

7. How much time was Mr. Kelly there?

When Mr. Kelly was first in Lake Charles, about  
133 1899 or 1900, he was there for twelve months or more (I can not give the length of time definitely) for one or two years.

8. Constantly?

He would return to his home in the summer time.

9. Did you have any dealings with any other employe of the company besides those you have mentioned?

No direct dealings that I can recall. The parties I have mentioned were the parties in the local office at Lake Charles. The local office was in the same building in Lake Charles as our law office—the First National Bank Building.

10. Do you know whether or not from 1898 to 1902 a

man by the name of Nat Wazey was employed by the company?

Nat Wazey did some work for the company out in the field.

11. Do you know whether he was regularly employed or was employed spasmodically?

I could not answer that question because I really don't know. Mr. Wasey was at that time living in the northern part of Calcasieu or about the edge of Vernon Parish and I did not see him in Lake Charles more than twice a year. He was out in the country.

12. In looking over these papers, abstracts, deeds, etc., did you ever have any occasion to look over or notice any reports from Nat Wazey regarding any transaction?

No, sir. No report from Wazey would ever come to our office; at least, I recall none.

13. Mr. Moss, how is it that you know then that Nat Wazey was employed to do field work as far back as 1898 by the Wright-Blodgett Co.?

I don't know, Mr. Mills, that it extended that far back.

14. How far back do you know it extended?

I can not tell you with any certainty.

15. How long prior to the employment of Ben M. Foster do you know Nat Wazey was connected with the company?

I can not answer that question either. It has been  
134 about five or six years ago and my recollection is that Mr. Wazey was doing some work while Mr. Foster was in the local office, but as to how far beyond that time or prior I could not fix that.

16. Do you know that he was employed by the company sometime prior to the time Mr. Foster took up his work?

No, sir; not with certainty enough to answer. Mr. Foster had been at work for the Orange Land Company down there and I think that Mr. Kelly employed him and he changed right over to the other office, but I can not fix the exact time.

17. Do you know whether Wazey was employed by the Wright-Blodgett Co. prior to 1902?

I can not swear that he was.

18. Do you know?

It is likely that it was prior to that time, but I can not say positively without referring to documents or something that might show such employment. I can not from recollection. It is six years back and I can remember about the dates.

19. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett people?

I think all but the first transaction. My recollection is that when the company first organized that it embraced a very large tract of land from parties in Chicago—the Fairbank people—and according to the best of my recollection that purchase was made before Pugo & Moss ever saw the abstracts of title.

20. In cases where the Wright-Blodgett Co. would purchase direct from entrymen or government land would you be called upon to pass upon such title where there were no transfers—nor intervening transactions?

That is my recollection; that the abstract would be brought in; either before or after issuance of patent the abstract would always be brought in showing the issuance of the patent or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, written

135 opinion would be given, and then, after the deed was acquired in the name of Wright-Blodgett Co., either the same abstract or a new one would be made up

and brought in for our examination and opinion. Afterwards Mr. Kelly explained to us that he wanted opinion from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owners so that in event of sale of land subsequently these written opinions could be used.

21. Did you make up a new opinion in each instance when receiver's receipt and patent were submitted to you?

Yes, sir; that is my recollection.

22. You are not positive about it?

It might have been that in a very few cases the deed was taken before the abstract was brought in, but my recollection is that the rule was otherwise.

23. What did the abstract show in a case where there had been no transfer and the Wright-Blodgett Company was purchasing direct from entrymen after the issuance of receiver's receipt?

In such case, if it was before the issuance of patent and after the issuance of final receipt, it would simply show issuance and record of the final receipt. In other words, we did not have the affidavit of the entryman before transfer.

24. In these cases of purchases after the final receipt but before patent did the abstract submitted to you show any report as to whether the lands had been examined to ascertain

whether or not the homestead law had been complied with?

No; we would have the naked abstract showing just the issuance and record of final receipt.

25. During the years of your employment by the Wright-Blodgett Co. you talked frequently about land matters and titles with Mr. Kelly, did you not?

Yes, sir; but only with reference to the validity of the titles as was shown by the abstracts and in a general way about them. The idea I want to convey is that Mr. Kelly did not talk his private business with me.

26. In his talks with you in regard to the validity of titles did he display a thorough knowledge of the homestead law of the U. S.?

I can not testify as to what knowledge Mr. Kelly had at that time of the homestead laws of the U. S.; that is, as to what is required in the matter of proof and residence, etc., by the homestead entrymen I can not say what knowledge he had of those matters.

27. Now, Mr. Moss, you are a lawyer and an intelligent man and you know you have talked many times with Mr. Kelly in regard to these land matters. Now, I don't presume that you can look into Mr. Kelly's mind and state the exact extent or condition of his knowledge, but you can state whether or not from your conversations with him he showed a general thorough knowledge and understanding of the government land laws in regard to homesteads. I ask you to state that.

I can not say that Mr. Kelly when he came to Calcasieu parish about 1899 had a general knowledge of the homestead laws because I do not recall that we ever discussed them with Mr. Kelly at that time, but we did, in later years, when the government inspectors were sent into Calcasieu, Vernon and other parishes and it was reported that there had been some fraudulent entries, caution Mr. Kelly particularly about the acquisition of lands on the issuance of final receipts unless the entrymen were complying with the laws, and insisted upon his finding out whether such entrymen were complying with the laws as to cultivation, residence, etc. In other words, Mr. Kelly was a stranger to our firm (Pugo & Moss) when he first came to Louisiana in 1899 and we did not know what experience he had had in land matters prior to his coming to Louisiana.

28. Mr. Moss, I don't consider that you have answered the

question. I again ask you, from your experience and dealings with Mr. Kelly between the time when you first met him and he was a stranger to you in 1899 and the time when the inspectors were going about the country in 1902, what impression he created upon you as to his knowledge of land matters and government land laws.

I will have to say in answer to this, Mr. Kelly did  
137 not display any great knowledge of land matters and land laws because he would not make a purchase without coming to the office with his abstract and asking our opinion as to the title, and at that time Mr. Kelly was known to us as an expert timber estimator rather than a man who knew the land laws.

29. Did you ever discuss with him these questions of title?

I don't recall that we ever had any discussions with Mr. Kelly about the acquisitions of titles further than to report directly on the abstract until it was rumored that the Government was making investigations in that territory.

30. Did you advise the Wright-Blodgett Co. that before transferring any land that they had purchased upon a simple receiver's receipt that it would be advisable for them to make an investigation before they sold the land to any one else?

No, sir; I don't recall that we ever gave any such advise [advice] to him or ever thought it was necessary, because up to the time of these rumored investigations we did not know a single case that had come up in our courts in Southwest Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making, themselves, any special investigation of it.

31. After you had learned of these investigations and had become convinced that a purchase upon a simple receiver's receipt was not a safe purchase did you advise the Wright-Blodgett Co., or did they advise with you as to whether or not it would be proper for them to have investigated lands that they had already purchased upon a simple receiver's receipt as to whether or not the homestead laws had been complied with?

No, sir; we did not go into the question of any past transactions but talked with them about future transactions, to be careful and see that the law was complied with.

32. Now as to future transactions—did you advise them or did they advise with you as to whether or not it would be safe or proper for them to sell to third persons lands acquired by

them upon a simple receiver's receipt without making investigations about the compliance with the law?

No, I don't recall that that question ever came up  
138 or was discussed in the office?

33. Can you remember the exact date, or the approximate date when the Wright-Blodgett Company became aware of these investigations?

No, sir; I can not fix the date definitely.

24. [34] About when?

I can only approximate the time and I can not get it definitely within a period of over three years, about 1902-1903-1904. I don't remember exactly when the investigations were begun and we did not find out about them until some time after that, because the government people worked quietly and secretly. I should say along about 1902, '03 or '04.

35. When you called the attention of Mr. Kelly, or any other representative of the Wright-Blodgett Company to the importance of having investigations made when they were about to purchase lands under a receiver's receipt, and before the issuance of patent, was anything at all said about purchases made under those circumstances prior to the hearing of these rumors of inspection?

No, sir; I don't think that past transactions were ever referred to.

36. Now, Mr. Moss, do you know that many such purchases had been made prior to that time?

Yes, sir; I know quite a number.

37. You are absolutely sure that when you told these people that there was a question as to the validity of title thus acquired unless the law had been complied with that they asked you absolutely nothing at all about purchases that had already been made under those circumstances?

That is my recollection.

38. Mr. Moss, you do not know as a fact that in cases of purchases upon a simple patent or simple receiver's receipt that you were always consulted under these circumstances?

I can not swear that I was consulted in every case.

39. You have never examined the records of all  
139 lands acquired under any circumstances by the Wright-Blodgett Co. and then checked that up against opinions rendered by your office to ascertain whether or not your office had rendered opinions in cases of all lands?

No, sir.

40. Then, for all you may know or recollect, they may have made a number of purchases upon receiver's receipt or patent where there had been no intervening transfers without consulting you?

Such a thing is possible, but our understanding is that every transaction passed through our office except the original purchase made, as I recall, from the Fairbanks, which was a very large purchase made by Wright-Blodgett Company, and I think that abstract reached the office at some subsequent date, and was examined.

### Re-Examination.

By Mr. Monroe:

1. Mr. Moss, on your cross-examination informally in the course of explanation given to the assistant district attorney, you explained the attitude of the Calcasieu bar prior to the coming of the government inspectors into Calcasieu parish on the subject of titles based on final receipts from the government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the government inspectors?

Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt which showed that he had made his final payment that it was absolutely safe to approve the title. There had been no suits in our courts that I can recall where any charges of fraud was ever made relating to any entries, and the lawyers, while they might have been mistaken, thought a final receipt to be equivalent to a patent.

2. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

1. The first time that the matter was called to  
140 our attention was when the investigation was started  
by the government to which I have referred, and I  
can not give the exact year.

3. In the course of the cross-examination counsel for complainant seemed to think it strange that after your attention was called to this possibility of trouble no reference was made

in your conversations with Mr. Kelly to titles acquired prior to that time. How do you account for the fact that no reference was made to prior acquired titles?

The only way to account for that is that at the time of these investigations the discussion came up as to future care in the acquisition of title where final receipt only had issued; that for the past transactions the patents had at that time been obtained, if not in every case, in almost every case. The patent had been obtained and had issued to the original entryman who had issued final final receipt, and not having had any litigation at the instance of the government or otherwise attacking such transactions, it was naturally thought that after the issuance of the patent it was all a closed book. It was the lawyers' opinion in such cases.

#### Re-Cross Examination.

By Mr. Mills:

1. The answer that you have just made, that you account for your failure to advise them as to past transactions because you think patents had issued—is that answer based on knowledge or simply opinion or thought on your part?

That was the only way I could account for it; as to the past transactions we were not asked about them.

2. Did you make any investigation as to whether patent had issued in past transactions?

No, we did not make any investigation of our own.

3. Then, if you are asked as to whether or not in cases of purchase upon simple receiver's receipt prior to this investigation patents had issued at the time that you heard of these investigations you would have to answer "I don't know"? Is that correct?

Yes, sir; I would so have to answer. Although  
141 when patents came in they would be reported to us.

I would say "I don't know" as to each case; I could not say positively.

4. Then, I understand from your answers, Mr. Moss, that it was the custom of your firm, which was employed by the Wright-Blodgett Company to pass upon the matters of titles, to base your opinion upon the attitude of the bar, and to whether or not any suits had been brought or any investigation made by the government rather than by the investigation of the law. Is that correct?



No, not exactly. We thought that when an entryman held his final receipt that he was entitled to the patent. That was our opinion at that time.

5. That was a mere independent matter of opinion, clean from the general attitude of the bar, or was it based on a thorough investigation of the law by you?

It was based upon reading of the law, but not a close study into the homestead law and the requirements in different jurisdictions in such matters. We had approved in the past a great many titles on issuance of final receipt and all had stood, and so we based our knowledge on our past experience and our general knowledge of the law, and we thought we could approve the law on issuance of final receipt.

142      TESTIMONY OF MR. C. D. MOSS, WITNESS IN  
BEHALF OF DEFENDANT, IN THE J. J.  
HICKS CASE. NO. 382.

Direct Examination.

By Mr. Monroe:

1. Mr. Moss, I hand you marked "W.-B. Co. No. 1," and what purports to be the opinion signed by Pugo & Moss. Will you please examine same and tell me whether that abstract is for the Northeast quarter of Section 8, Township 2 North, Range 5 West?

A. Yes, sir; this contains an abstract of the Northeast quarter of Section 8, Township 2 North, Range 5 West.

2. Is the document purporting to be the opinion of Pugo & Moss a genuine opinion of those gentlemen?

A. Yes, sir.

3. As far as you know, was the general custom of the Wright-Blodgett Co., of submitting title before purchasing and then submitting the abstract with the purchase added thereto to you after the purchase followed in this case?

A. Yes, sir. So far as I know.

4. How many titles all told did you examine for Wright-Blodgett Co.?

A. I am unable to give you the number—there were so many.

(In connection with the testimony of witness, counsel for

defendant offers abstract and opinion marked "W.-B. Co. 1," subject to his right to withdraw same for use in the Boyd and Allen cases.)

(The admission of this abstract and opinion is objected to by the government on the grounds that it is part of the books and records of the company and is not admissible in evidence in its own behalf.)

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### Cross-Examination.

By Mr. Mills:

1. Do you know of your own knowledge whether or not the abstract was presented to you for any investigation of the title in this case prior to the purchase of the land by Wright-Blodgett Co.?

A. I cannot say positively that there was a prior abstract covering this property. I only testify as to my knowledge of the rule in the matter.

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J. J. HICKS, witness in behalf of complainant,  
being duly sworn, testified as follows:

(The following testimony is to be used on the question of good or bad faith in all the cases in which Wright-Blodgett Company is defendant—this being dictated by counsel for government but being strenuously objected to by counsel for defendant.)

### Direct Examination.

By Mr. Mills:

1. Mr. Hicks, where do you live?

A. At Leesville, in Vernon Parish.

2. How long have you lived there?

A. I moved to Leesville the 3rd day of July, 1899.

3. Did you make a homestead of any lands in Vernon Parish?

A. Yes, sir.

4. How many?

A. One.

5. When did you make that entry?

A. I don't know exactly.

6. Do you remember about when?

A. I think in 1899. It was in the fall after I moved to Leesville in the summer, I think.

7. Do you remember the description of the land you homesteaded and the numbers?

A. No, I do not. I believe it was of Section 8, either the Southeast or Northeast quarter.

8. Section 8? And what township?

A. 2 North, Range 5, I think.

9. How did you come to make this entry, Mr. Hicks?

A. I did it of my own volition, for a homestead.

10. When did you first learn that this land was vacant?

A. Only a short time before I made the entry.

11. Through whom did you learn that this land was vacant?

A. Through J. M. Boyd.

145 12. Where was Mr. Boyd living at that time?

A. In Vernon Parish, about Cora Postoffice.

13. Do you know what was his occupation?

A. U. S. Commissioner.

14. Do you know whether he did any other work at that time, or not?

A. No, sir; I do not know.

15. You learned through Mr. Boyd that this land, Sec. 8, T. 2, R. 5, was vacant?

A. Yes, sir. I asked him to look up a vacant homestead.

16. Did you make the entry at the land office?

A. Before the Clerk of Court at Leesville.

17. What steps did you make to perfect that entry?

A. After making the entry within a short time I hired the improvements put on it—had houses built, rails split and about two acres of land cleared.

18. Who did you hire to do this?

A. I hired Mr. Laerence. I don't remember but that Mr. Bass assisted him.

19. When did you move upon this land to take up your residence?

A. My first visit to the land after the houses were completed must have been sixty days, maybe ninety days, I don't remember, but it was only a short length of time.

20. Did you maintain a residence anywhere else?

A. My home was in Leesville.

21. Were you a married man?

A. Yes, sir.

22. Had a family?

A. Yes, sir.

23. Where did your family live?

A. Leesville.

24. Where was your actual residence during the time of this homestead?

A. Leesville.

25. How often, if at all, did you go upon this  
146 this homestead?

A. Once about every four months to the best of my recollection.

26. You would visit the land once every four months.

A. Yes, sir.

27. Would you stay any length of time?

A. Spent the night.

28. That was the extent of your residence on this land

A. Yes, sir.

29. How was this house furnished that you had on the  
land?

A. I don't remember so long; not much; a chair or two, and a bedstead.

30. Any cooking stove?

A. No, sir. What cooking we did was in a fireplace—old style.

31. What crop did you raise on this land?

A. I raised one crop.

32. Did you raise it yourself or hire it raised?

A. Hired it done. Raised corn and some peas with the corn; also had some fruit trees, probably half a dozen or more.

33. Was the crop ever cultivated?

A. I don't know about that. Mr. Allen, my brother-in-law, who had homestead adjoining this, looked after that part of it.

34. Do you know of your own knowledge whether this crop was ever harvested?

A. I do not.

35. How many seasons was this land cultivated?

A. One.

36. Did you ever prove this entry in any way? Ever take out any final papers?

A. Yes, sir; commutation homestead proof.

37. In making this commutation proof do you remember the time you made it? The date?

A. In 1901, I believe.

38. You are not positive about the date?

A. No, sir.

39. In making this commutation of your entry  
147 was it necessary to pay any sums of money to the government?

A. Yes, sir.

40. How much?

A. Right around \$400.00 for each entry.

41. Where did you get the money?

(For emphasis the objection is here made that this testimony is irrelevant as it does not tend to prove or disprove any fact or allegation set forth by the pleadings at issue in this case.)

A. Mr. Dickens, who was in the employ at that time of the Wright-Blodgett Co., visited Leesville frequently and a short time before the fourteen months' period had expired he asked me something about the homestead, and I told him "Yes, I have a homestead," and he asked me then

(Objection here made by defendant on account of hearsay.)

(Counsel for complainant asserts that by testimony heretofore given in this case it has been shown that Thos. B. Dickens was the agent and employe of the Wright-Blodgett Co., and that, therefore, this statement is directly applicable to the issues involved in these suits.)

what I was going to do with the land. I told him I guess I would sell it after I made my proof. The question then came up as to the commutation money and Mr. Dickens remarked "I will loan you the money." I told him "all right," and after I had received my final receipt Mr. Dickens came to Leesville and made me an offer on the land, which I accepted.

42. In compliance with his promise of Mr. Dickens, did he ever loan you or advance you any money?

(Objected to on grounds of irrelevancy.)

A. Yes, sir.

43. State the circumstances, amounts, etc.

148 A. Well, three or four days, as well as I remember, before the day for making the proof, I wrote Mr. Dickens that I would need about \$200.00. He sent me check for that amount. Upon forwarding the proof together with that amount of money to the land office at Natchitoches I was advised by the officials that the land was situated out of the \$1.25 limit, and that I would be required to pay \$2.50 per acre, and to the best of my recollection I mailed Mr. Dickens the letter that I had received from the land office and he mailed me check to cover the balance.

44. Where did you address Mr. Dickens?

(For the purpose of emphasis the objection of irrelevancy is again urged against this testimony with the suggestion that the bills in this case set up for grounds of attack upon the patent merely failure to live upon the lands, and make improvements, and that the alleged statements of Mr. Hicks, and Mr. Dickens pertain to questions not raised by the pleadings, and are hence irrelevant.)

(Counsel for complainant asserts the materiality of his testimony upon the issue joined by the bill and answer as to the good and faith on the part of the Wright-Blodgett Company, and is offered for the purpose of showing guilty knowledge upon the part of Wright-Blodgett Company at the time of and prior to the purchase of these lands through its agent, Dickens, and through its agents, Kelly and Wazey.)

A. Lake Charles.

45. Do you know for whom Mr. Dickens worked at that time?

(Objected to unless witness knows of his own knowledge.)

A. I know from hearsay.

46. From his own statement?

A. I only know by this: I was Clerk of Court  
149 and Mr. Dickens visited my office frequently, looking  
after matters pertaining to deeds conveying lands to  
Wright-Blodgett Company.

47. Did Mr. Dickens state to you whether or not he was  
furnishing you this money for commutation of land personally  
or for some one else?

A. I do not know.

48. After the commutation of this land did you receive any  
final receipt or receiver's receipt?

A. Yes, sir.

49. Did you ever make a sale of this land?

A. Yes, sir.

50. To whom?

A. Wright-Blodgett Co.

51. Examine this and see if it, to the best of your knowl-  
edge and belief, a correct copy of the act of transfer?

A. I could not say. I believe it was on a printed form.

52. Is this a correct copy?

A. Yes, sir; I am sure—in fact, I know—it is the deed of  
1901.

53. You sold the land to Wright-Blodgett Company?

A. Yes, sir.

54. Who represented Wright-Blodgett Co. in the making  
of this sale?

A. Mr. Dickens.

55. This deed recites that it is made for a consideration of  
\$800.00. Was that amount paid you for the land?

A. Yes, sir.

56. Was it paid in cash?

A. Yes, sir.

57. State whether or not it is a fact that upon the making  
of this sale you were paid \$800.00 in cash, or \$800.00 less the  
amount already advanced you for commutation?

A. I was paid the amount less the checks sent me before.

58. Then the money advanced you by Dickens for com-  
mutation of this land was applied when the land was sold  
Wright-Blodgett Co. as part of the purchase price?

A. I believe it was.

150 59. Don't you know?

A. Yes, I know it was by their deduction.

60. Did Mr. Dickens at any time before the commutation or after or before the sale or after make any inquiries of you as to what extent you had complied with homestead laws regarding this land?

A. No, sir.

61. How often did Mr. Dickens come to Leesville?

A. He was there quite frequently. I don't remember. Sometimes sixty or ninety days; at other times once a month.

62. You were living openly with your family at Leesville?

A. Yes, sir.

63. Was Mr. Dickens ever at your home?

A. Yes, sir.

64. Do you know from statements made by him whether or not he was aware that you were living at Leesville?

A. He must have known.

65. You were Clerk of Court at the time?

A. I was.

66. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see if it was probably settled, or lived upon, or the homestead laws were complied with?

A. I do not know.

67. Do you know Nat Wazey?

A. Yes, sir; I did know him.

68. How long had you known Wazey at the time you commuted this land?

A. I think I met Mr. Wazey before I was elected Clerk of Court; about the time I began work for Mr. Winfree, in 1899.

69. Did you ever have any talks with Mr. Wazey regarding this land?

A. No, sir.

70. What was Mr. Wazey's occupation?

A. I didn't know; I heard afterwards. Everybody seemed to know he was buying land for Wright-Blodgett Co.

(Objected to on the ground of irrelevancy and on the ground that it hearsay of the rankest character.)

71. Do you know where Nat Wazey lived?

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A. No, sir. I can not say that I did. I was



never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Waezy's activity and occupation for the Wright-Blodgett Co. was?

A. Well, principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory, I think. That is, where he bought the principal part of land.

74. Mr. Hicks, during the life of your entry before the sale of the land to Wright-Blodgett Co., was, or not, Nat Waezy frequently in the Clerk's office at Leesville?

A. Up to that time, not very often.

75. Was he there occasionally?

A. Yes, sir.

(Objected to as leading.)

76. Was Waezy ever at your house?

A. No, sir.

77. Do you know from his acts or words that he was aware of your living there?

A. I do not.

78. Do you know whether he was aware that you were Clerk of Court at Leesville at the time he would file deeds and papers with you?

A. Yes, sir.

79. How far was this homestead of yours from Leesville?

A. In the neighborhood of 20 miles. About 20 or 25 miles.

80. Any railroad connecting the places?

A. No, sir.

81. Any trolley lines of any kind?

A. No, sir.

82. How long would it take you to make a trip from your homestead to Leesville?

A. About five hours.

83. By what method of travel?

A. Buggy.

## Cross-Examination.

By Mr. Monroe:

1. Mr. Hicks, I understand that on your homestead there was a good house with furniture and bedding and a fireplace?

A. There was no bedding, but furniture and a fireplace.

2. Was there a bedstead in it?

A. Yes, sir.

3. If I understand correctly, this house was known as a double-pen house and was built directly on the line between your homestead and W. O. Allen's homestead?

A. Yes, sir.

4. W. O. Allen lived in part of that house during the life of the entry?

A. Yes, sir.

5. W. O. Allen's is your brother-in-law?

A. Yes, sir.

6. During that time there was a certain acreage of land fenced in and cultivated?

A. Yes, sir.

7. I suppose you had a well and a hog-pen?

A. Yes, sir. We got good water from the spring.

8. Good water in the neighborhood?

A. Yes, sir.

9. Had you any out-buildings; any corn-crib?

A. I did not. Mr. Allen had a corn crib.

10. What family did he have?

A. Wife and one child.

11. You went out every once in a while and stayed several days—a week?

A. Well, one day and night was all the time I had to spend there.

12. I think Mr. Winfree said you had stayed there two weeks. Is he correct?

A. I had frequently spent two weeks looking after matter pertaining to my stock, cattle, and matters of that kind and during the time I would visit my homestead.

13. And these cattle were around on this acreage?

A. Yes, sir; in the cattle range.

153 14. During the life of your homestead your fences and house were kept in order?

A. Yes, sir.

15. I suppose Mr. Allen and his family kept your part looking habitable and clean so that you could find a clean place to sleep?

A. Mr. Allen looked after my part of it while he was there.

16. You say you made 18-mile ride day before yesterday in 2 1/2 hours?

A. Yes, sir.

17. Now, between friends, Mr. Hicks, don't you think you were laying it on thick when you said it took you five hours to drive twenty miles to your homestead?

A. It frequently took me all day. I had friends on the road where I would stop and lose time.

18. You were in politics in that part of the parish at the time and in making these political pilgrimages it would frequently take five hours or longer, I suppose?

A. Yes, sir.

19. But at a good, hard drive, how long?

A. Four hours in a single rig. If I was going after a doctor in Leesville I could make it in 2 1/2 or 3 hours. Four miles an hour was a good, average gait for that country.

20. Mr. Hicks, one thing I want to straighten out. The government has alleged that your entry dated Oct. 9, 1898. I understood on your direct examination that you said you thought it was in 1899. Did you speak from recollection?

A. Yes, sir. I would not be positive about it. It was after I moved to Leesville. I might have moved there in 1898 instead of 1899. The records will show.

21. When did you first know Mr. Dickens?

A. I knew him after I was elected.

22. Clerk of Court?

A. Yes, sir; in 1900.

By Mr. Elstner:

1. Do you know how long Mr. W. O. Allen resided with his family on the homestead entry?

A. Mr. Allen moved from Leesville with his family with the intention of moving directly on his homestead, but after reaching my mother's his wife's health failed and he was in bad health, too, and he occupied a house about three miles

from his homestead on account of being near a doctor; but he worked the land on his homestead and visited it frequently.

2. To your own knowledge did he, with his family, reside upon his homestead at all?

A. No, sir.

3. How much of that land did Mr. Allen cultivate?

A. About two acres. That is, about four acres all told; about two acres on his part.

4. How many crops did he raise?

A. Only one, I am pretty sure.

5. You know of what that crop consisted?

A. I do not.

6. Do you know whether it was cultivated or not?

A. No, sir.

7. Mr. Hicks, was the crop either on your place or on the place of Mr. Allen cultivated in a manner in which a farmer usually cultivates his crop?

A. Well, about, an average for that part of the country. I hired mine cultivated. Had a two-bit pony and a two-bit plow.

8. And you raised about a two-bit crop?

A. Yes, sir; a few barrels of corn, but I don't remember just how much. Mr. Allen looked after it.

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#### Re-cross Examination.

By Mr. Monroe:

1. Did I understand your testimony to be that Mr. Allen had not lived in the house there at all?

2. He did not live there with his family. He only visited it, but was there a great many times.

2. Did he sleep on the place frequently?

A. Yes, sir. Every time I was there, and I think I heard him say he stopped over there between the times we were together.

3. Then, as I understand your testimony, Mr. Allen would stop and reside there as much as his wife's health would permit him?

A. She never spent the night there.

4. During his absence at night at that place his wife was sick some distance away?

A. Yes, sir. He left Leesville with the intention of staying there, but had to stop on account of his wife.

5. But he stayed there and slept there at all times except when his wife's condition required him to be with her?

A. No, he did not do that.

6. What did he do?

A. As I before stated, on account of his wife's illness, and he, himself, being in bad health, he did not move into this house on the homestead as he had intended doing; but he was with me every night I stayed there and slept in his end of the house. And I have understood from him that he was there at times between the times we were together there.

7. Mr. Hicks, had you or Mr. Allen any reason to believe that you had not complied with the law in regard to homesteading?

(Objected to because that is a conclusion of law to be drawn by the Court from the facts in the case, and it is not competent for the witness to state his opinion about it.)

(Mr. Monroe—"Mr. Examiner, I will ask that you  
156 instruct this witness that counsel for government has the privilege of making what objections he sees fit, but that he, the witness, is to make answers just as if no objection of any kind had been made.")

(On request from counsel for defendant the master instructed the witness as follows: "I instruct Mr. Hicks to answer the questions as asked by counsel for defendant, as if no objection had been made.")

A. At the time we made our homestead proofs we were of the opinion that proofs were all right, as it was customary for the answers to go into the proof that claimant had not been absent six months at any one time. We did not know but what the proofs were all right until the matter was presented to the Court.

8. You honestly thought they were all right and acted in perfectly good faith?

A. Yes, sir.

9. Have you had any talk with any government official or agent relative to this case?

A. Well, very little. I talked with Mr. Elstner some in a general way.

10. Did you give a written confession of judgment against you in this Hicks case?

A. I did.

11. Did you give that on any terms or conditions?

A. No, sir; nothing more than my understanding that this would possibly end the case.

12. Was it your understanding that there would be no effort toward prosecution by the United States?

A. Yes, sir; that the patents would likely be cancelled and that the Wright-Blodgett Co. would have the privilege to lay script on this land or take it up any other way they might see fit.

13. And it was with that understanding on your part that this written confession of judgment was signed by you?

A. Yes, sir.

157 14. Now, Mr. Hicks, you are a man of considerable standing in your community and have been elected to various public offices, have you not?

A. Yes, sir.

15. No one in that community had any reason to suppose that at the time you were making your commutation proofs during 1901 that you, by word or deed, would affix your signature to any statement that was not thoroughly correct in every respect?

A. No, sir.

16. Your character in the community had been without stain of any kind?

A. Yes, sir.

(It is admitted that Mr. Hicks was a man of unquestioned good standing in the community so far as is known to the U. S. attorney or his assistant, and that there has never been any other charge of any character whatever brought to the attention of the U. S. attorney except in the matter referred to in the examination of this witness by the counsel for the defendant.)

#### Re-direct Examination.

By Mr. Elstner:

1 Mr. Hicks, did you ever at any time have any understanding with me as U. S. attorney that the Wright-Blodgett

Co. would have any privilege growing out of this transaction locating the lands involved either in your homestead or the homestead of Mr. Allen, except as would accrue to the right of any American citizen when those lands should be, if they were, returned to the public domain?

(Objected to as leading.)

A. I thought I had covered that point already. It was my own conclusion. I naturally knew that they would, of course, protect themselves.

2. You have known me for a long time, have you not?

A. Yes, sir.

158 3. You were a witness before the Federal Court at Alexandria in regard to the number of perjury cases growing out of land transactions?

A. Yes, sir.

4. Without putting you upon the stand or putting you under any oath, have I not accepted your statements to me as an individual without question?

A. Yes, sir.

5. Did you not state to me, as a matter of fact, that neither you nor Mr. Walter O. Allen were sworn at the time of making commutation proof in the cases of Hicks and Allen?

A. Yes, sir.

6. Did you not know, as a matter of fact, that along about the time of assigning this consent pro confesso that you were not to be prosecuted in this case?

A. Well, I don't remember, Mr. Elstner, any direct statement to me, but reading between the lines I supposed there would be no prosecution.

7. Were you not aware of the fact that you had not been sworn and that I, as U. S. attorney, was aware of that fact?

A. Yes, sir; I was aware of the fact that I was not sworn. I did not know that you knew it.

8. You had no reason to believe that I discredited your assertion that you had not been sworn?

A. No, sir.

9. You know that the proof in the cases of J. J. Hicks and W. O. Allen were both made before J. M. Boyd?

A. They were.

10. Do you know Mr. Boyd?

A. Yes, sir.

11. Do you know that it is currently reported and has been asserted by Mr. Boyd that he never swore any witness; that he did not think it necessary; that it was merely a matter of form?

A. Yes, sir.

12. Were you present at the Court at Alexandria when J. M. Boyd, U. S. Commissioner, was called as a witness to prove the administration of an oath by him as such official to the homesteader and his witnesses in the case of commutation proof and heard him state under oath that he regarded this proof as a mere matter of form and never inquired the parties to be sworn?

A. I was.

(It is conceded on the part of the government that these commutation proofs bore the certification of the several officers before they were taken that the oath was administered.)

160      TESTIMONY OF WALTER O. ALLEN, WITNESS IN BEHALF OF COMPLAINANT.

Direct Examination.

By Mr. Mills:

1. Where do you live?

A. Leesville, Vernon Parish.

2. How long have you lived there?

A. Since 1889.

3. Do you know Joe J. Hicks?

A. Yes, sir.

4. How long have you known him?

A. Twelve or fourteen years.

5. Are you related to him?

A. By marriage; he is my brother-in-law.

6. Do you know where Mr. Hicks was living during summer and fall of '98?

A. In Leesville.

7. Was Mr. Hicks married at that time?

A. Yes, sir.

8. Did he have a family?

A. Yes, sir.



9. How large?

A. Four children.

10. Did his family live with him at Leesville?

A. Yes, sir.

11. From that time on how long did he continue to live there?

A. Up to the present time.

12. Has he ever resided anywhere else that you know of?

A. No, sir; not that I know of.

13. Do you know of your own knowledge whether or not any time in 1898 or 1899 Mr. Hicks made any homestead entry in Vernon Parish?

A. Yes, sir.

14. Do you know whether he made more than one?

A. Only one homestead.

15. Do you remember the description of that  
161 land?

A. Northeast quarter Section (I don't remember the section); Township 2, Range 5 West.

16. Did you make any homestead entry yourself?

A. Yes, sir; adjoining that. The southeast quarter of same section. His was the northeast quarter.

17. Do you remember when your entry was made?

A. No, I don't remember now.

18. Did you and he make your entries together, or at the same time?

A. He made his a little before I did, I believe.

19. Do you remember when you made yours? Approximate the month and year.

A. Sometime in 1898, I believe; I don't remember exactly.

20. Do you remember what improvements Mr. Hicks put on his homestead?

A. He and I made a combination house—a double house—on the dividing line, one-half of the house on each side.

21. What other improvements were made on his side, if any?

A. We made an entire enclosure of about two acres—that is, half on each side of the dividing line.

22. Did Mr. Hicks ever plant any crop that you know of?

A. Yes; some peas were planted on it.

23. Did he plant that lot of peas himself or hire it done?

A. I could not say now; I don't think he planted them.

24. Do you know whether this crop ever matured and was harvested or not?

A. It never matured to make enough for the seed that was put in the ground.

25. Was it cultivated in any way or any attention paid to it after planting?

A. Not to amount to anything.

26. How often did Mr. Hicks to your knowledge go from his home in Leesville to this land?

A. At intervals of three, four, five or six months.

27. Did he take his family with him on these trips?

A. I never saw any of his family there.

28. How long would he stay upon the land on the occasion of these periodical visits?

A. Twelve to thirty-six hours. Sometimes that included the entire time gone, coming and going.

29. Did you ever know Mr. Hicks to stay upon this land for any longer period than that?

A. No longer than twelve or fourteen hours that we would be together. He would stay overnight from about five in the evening until early next morning.

30. Then the only actual length of time that you ever knew Mr. Hicks to be on that land was a periodical visit every three, four, five or six months and he would then stay overnight?

(Objected to as leading.)

A. Yes, sir; and he would stay overnight.

#### Cross-Examination.

By Mr. Monroe:

1. You say you and Mr. Hicks had a double house? What is commonly called a double-pen?

A. Yes, sir.

2. Any doors or windows?

A. Doors, but not the windows.

3. Was the enclosure actually fenced in?

A. Yes, sir.

4. Any out-buildings?

A. Stable.

5. Did you have any orchard trees planted?

A. Yes, sir.

6. What else did you have planted in the enclosure besides peas and trees?

A. A little corn at one time.

7. Were a few barrels of corn made in the enclosure?

A. A few barrels? I never saw it.

163 8. Mr. Hicks stated that there were a few barrels of corn made.

A. I didn't see any.

9. Mr. Hicks stated that you and your wife started out to live in that double-pen house and that your wife was taken sick.

A. That is correct.

10. To what extent did you live in that double-pen house?

(Objected to by counsel for government on the ground that any residence by Mr. Allen on his homestead is irrelevant in this case.)

A. At about the same intervals as in Mr. Hicks' case—two or three or four months apart; I would stop over a night or a day.

11. Did you personally do any work in the field inside that enclosure?

A. I never did; that is, in the fields.

12. What work did you do there?

A. I planted the trees, built fences and outhouses.

13. Where were these outhouses; on your side or Mr. Hicks' side?

A. On my side of the line.

14. When you made your commutation proofs, Mr. Allen, at that time didn't you and Mr. Hicks verily believe that you had complied in all respects with the law?

(Objected to by government as to what Mr. Hicks believed on the ground that it could be only hearsay.)

A. Yes, sir; that is my impression. I don't know what Mr. Hicks thought.

15. Did any of your family or Mr. Hicks' family remain

for any length of time in that house besides you and Mr. Hicks?

A. My wife and child did.

16. How long did they stay?

A. One night and part of the next day, one time.

17. Where was the spring in that neighborhood?

A. A little branch ran through the adjoining forty on the west.

18. Was there a spring on Mr. Hicks' forty?

164 A. No, on the opposite side; on the north side.

19. If he testified that there was a spring there would you contradict it?

A. If there was it was in the north side of the forty. I was on the south side and it was a half mile away and I never went to it if there one there.

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In Hicks Case—No. 382.

In this case counsel for government offers a copy of the records of the general land office of the Department of the Interior, showing the various papers filed and issued in the matter of the homestead entry of J. J. Hicks, No. 21,226, and rests his case.

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In Hicks Case—No. 382.

In this case counsel for defendant offers the patent marked "W.-B. Co. P.," and rests his case.

165           GREEN FOSHEE, witness in behalf of complainant, being duly sworn, testified as follows:

(Counsel for complainant asks that the testimony of Mr. Foshee be inserted in each of the nine cases.)

(Counsel for defendant objects on the ground of irrelevancy.)

Mills:

1- Where do you live?

A. Vernon Parish.

2. How long have you lived there?

A. Nearly all my life; a long time.

3. Near what towns do you reside?

A. Pitkin.

4. How long have you lived at Pitkin?

A. For six or seven years exception I have lived in the neighborhood of Pitkin ever since I was seven or eight years old.

5. Did you know Nat Wasey?

A. Yes, sir.

6. Did you know the widow Graham?

A. Yes, sir.

7. Do you know of your own knowledge whether Nat Wasey ever bought any improvements on land from the Widow Graham?

A. Yes, sir.

8. When was that?

A. I could not right positively; about seven or eight years ago to the best of my knowledge. I can't say what date?

9. Do you know where the Widow Graham lived at the time?

A. Yes, sir.

10. Where?

A. At the time he bought her improvements she was living on a creek that we called Ten-Mile.

11. What section?

A. I couldn't tell you what section.

12. Were you present when Wasey bought her  
166           out?

A. I was present when he made a contract with her to buy the property from her.

13. Did he make any statements at the time as to why he wanted to buy the improvements?

(Objected to as hearsay.)

A. I can't hardly say that I recollect.

14. Did he at any time ever tell you why he wanted those improvements?

(Objected to as hearsay.)

A. Yes, sir.

15. What did he tell you?

A. That he had homesteaded the place and he didn't want to take it away from her without paying her for it.

16. Then, from his statement, you were led to believe that he had already made a homestead entry on the land before he bought her improvements?

A. (Objected as leading.)

A. I think he had; yes, sir.

17. After this purchase did the Widow Graham continue to live there or move off?

A. She moved off some time after. I don't remember just how long. Some two or three months.

18. After she moved off of this land did any one else move on that you know of?

A. No, sir.

19. At the time that Nat Waezy purchased these improvements from Mrs. Graham where was he living?

A. Well, I couldn't hardly tell you. He was a timber man and he was over the country in different places at that time.

20. Do you know where his home was at that time?

A. No, sir; I do not.

21. Do you know of any place in that country that he lived or had a home about that time or short time afterwards?

A. Afterwards I did.

22. How long afterwards?

167 A. I can't say positively, but to the best of my knowledge over 4 months.

23. During the 4 months after purchasing these improvements from Mrs. Graham where was he living?

A. At that time he moved his family near a little place called Pitkin now.

24. What was it called then?

A. Weldon's place at that time.

25. How long did he live there?

A. I am unable to say.

26. Estimate it, please?

A. I don't think he stayed over two or three months.

27. How far was this place from the Widow Graham's?

A. I always called it 12 miles. I don't think it was quite that far.

28. Where did Wazey live after leaving Weldon's place?

A. He bought improvements from Dr. Stallsby on a place about 2 or 2 1/2 miles east of the place he was living at that time.

29. After buying this place did he move there and live there?

A. Yes, sir.

30. How long did he live there?

A. I can't say; I don't remember.

31. A day or a year?

A. A couple of years; maybe longer. He was there as long as I was in that section of the country.

32. Did you ever know him to live at any other place in that country except on the Weldon place and on this place he got from Stallsby?

A. No, sir. Of course, he was away from there half the time because he was working for some other parties, and he was at home very little himself, but his family was there most of the time.

33. How far was this place he bought from Stallsby from the property on which was located these improvements bought from Mrs. Graham?

A. It would have been eight or nine miles. We called the distance over the road. I couldn't say exactly.

34. Do you know of your own knowledge or from statements made by Wazey whether he ever made a homestead entry

on this land on which were situated the improvements bought from Mrs. Graham?

A. Yes, sir; I think he did. He told me he did.

168 35. Do you know whether he ever commuted that entry or took any steps to prove it?

A. I did not at that particular time.

36. Do you now?

A. Yes, sir.

37. How do you know it now?

A. I know it now by showing that I was a witness and I was arrested for being a witness on that homestead.

38. Were you a witness on his final proving up and commutation of that land?

A. If I was I didn't know it.

39. Have you any recollection of being questioned by any one as to the residence on or cultivation of this homestead of Nat Wazey's?

A. I have not.

40. Have you any recollection of taking any oath or signing any paper in regard to it?

A. I didn't take any oath, but I can not say I did not sign any paper, because Nat would come to me quite often to sign papers for him.

41. And did you sign without reading them or knowing what they were?

A. Yes, sir; most of the time. I can't read much. I haven't much education. I signed all that I thought were land deeds. I ran a little store and he would bring parties there and ask me to sign paper, and I didn't see any harm in it, and would always sign the papers he asked me to sign.

42. What statements did he make to you about what these papers were and why he wanted you to sign them?

A. I signed a good many where he just opened the paper and said, "Sign on this line," and I have heard other parties talk about deeds and heard agreements between them.

43. Did Mr. Wazey ever state to you or in your hearing whether or not he was having deeds made to himself or for other parties or firms?

(Objected to as hearsay.)

A. People he was working for.



44. Who was he working for?

(Objected to as hearsay.)

A. Wright-Blodgett Company.

45. How do you know that?

A. Why, I know, or think I do, because there were some of them in there and he always told me he was working for them, and I saw them all in there quite often.

46. Do you know Mr. Michael Kelly here?

A. Yes, sir.

47. Was he ever in your vicinity?

169 A. Yes, sir.

48. Was he there anywhere around the time of this Wazey homestead entry?

A. I think he was.

49. Do you know what Kelly was doing there in that vicinity?

A. They were took to be timber people.

50. Did you ever see Kelly with Waezy?

(Objected to as hearsay.)

A. Yes, sir.

51. Often?

A. I couldn't say anything about the times; several times.

52. When Mr. Kelly would go into that country with whom would he stay?

(Objected to as hearsay.)

A. Mr. Wazey.

53. How do you know that?

A. I have seen him there and have heard Wazey tell about his being there when I have not seen him.

(Objected to as hearsay.)

54. Did you ever sign any papers for Kelly?

A. I don't remember that I ever did. I wouldn't say that I did or didn't.

55. Was Mr. Kelly ever around when you signed deeds or papers for Wazey?

A. I can't undertake to answer that question.

56. When Mr. Kelly was in your vicinity did you ever see him going around or having any business dealings with any one but Nat Wazey?

A. I don't think I can give a correct answer to that. I have seen Mr. Kelly talking with other people, but whether it was on business or not I don't know that I could hardly be able to say.

57. Did you ever hear of any conversations in regard to land matters between Kelly and Wazey?

(Objected to as hearsay.)

A. I don't know that I ever did. I always thought that they seemed to be pretty particular in their way of doing business.

(Objected to as hearsay.)

58. Did you ever hear any conversations between them in regard to land matters?

A. I couldn't say positively. Mr. Kelly always  
170 seemed to be pretty particular about talking to any one. I never heard him get out and express himself. I never heard him, while in his presence, talk about his business. He was always joking, or something like that.

59. Did you ever hear Nat Wazey make any statement or say anything in regard to what he intended to do with his homestead after proving it up.

A. No, sir.

(Stenographer's note: It was just at this point in Mr. Foshee's testimony that Mr. Mills instructed me to insert his (Mr. Foshee's) testimony in all the cases, and Mr. Monroe objected on ground of irrelevancy. See page 1 of this testimony.)

#### Cross-Examination.

By Mr. Monroe:

1. Do you know any relatives of Nat Wazey by the name of Clingo?

- A. No, sir.
2. What brothers or sisters did he have at his death?
- A. I don't know whether he left any sisters or not; he left a brother.
3. What is his name?
- A. John.
4. Any other brother?
- A. I think he had another; I don't know his name.
5. Is his mother living?
- A. I don't know.
6. Is M. Wazey living?
- A. I don't know.
7. Is George Wazey living?
- A. I don't know him.
8. Do you know whether Nat Wazey bought more than one set of improvements from Mrs. Graham or not?
- A. I don't know.
9. Do you know of your own knowledge?
- A. If she had but one I don't know it.
10. You don't know whether she had or not?
- A. No, sir; if she had but the one I don't know it.
11. Are you prepared to swear that you did not sign your name on the commutation proof of Mr. Wazey?
- A. No, sir.
12. I hand you a copy of the Times-Democrat of Feb. 26th. Please read the headlines of the first column.
- A. I don't know that I can.
13. Well, try it.
- A. I can't read it good enough.
14. What is on the first line?
- A. Why that is "Navy Yard Commission," or something like that.
15. Second line?
- A. "President Appoints Men to Investigate Conditions," or something like that.
16. The next line?
- A. He Disregards and Defies Congress by this Act."
17. On the next line?
- A. "Roosevelt Determines to Discontinue Southern Yards."

18. Will you take that sheet of paper and write your name and address on it the best you can?

A. Yes, sir. (Which he does.)

19. How do you spell "land"?

A. I am not very good on spelling, but I reckon l-a-n-d.

20. How do you spell "house"?

A. H-o-u-s-e.

21. Hoe dod [how do] you spell "improvements"?

A. I-m-p-r-o-v-e-m-e-n-t-s.

22. How do you spell "crop"?

A. C-r-o-p.

23. How do you spell "clear"?

A. C-l-e-a-r-e.

24. How do you spell "season"?

A. I don't know that I can spell it.

25. Try it.

A. Se-a-s-e-n.

26. How do you spell "residence"?

A. R-e-s-i-d-e-n-c-e.

27. How do you spell "cultivated"?

A. C-u-l-t-i-v-a-t.

172 28. Mr. Foshee, can you swear positively to it as a fact that you ever saw Mr. Kelly in your neighborhood between Feb. 9, 1900, and May 14, 1901?

A. No, sir; I cannot remember what dates he was there. I saw him several times, but I cannot say what dates.

29. Can you swear positively to it as a fact where Nat Wazey was living between Feb. 9, 1900, and May 14, 1901?

A. As to the times, I cannot tell you just exactly what date. I cannot remember dates. As I have stated, Mr. Wazey was all over the country and I cannot say where he was lots of the time.

173 ED DYAL, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Where do you live, Ed?
- A. Elizabeth, on the Santa Fe Railroad.
2. What parish?
- A. Calcasieu.
3. In Louisiana?
- A. Yes, sir.
3. How long have you lived there?
- A. About a year.
5. Where did you live before that?
- A. In Rapides Parish, about ten miles north of Elizabeth.
6. How long did you live there?
- A. Around the place about ten years. I was born and raised there; not over three or four miles from there.
7. How far is that from Brushy Creek?
- A. About eight miles.
8. What do you do in that country?
- A. Mostly farming. I've been working for the Industrial Co. as laborer the last two years.
9. Did you ever know Nat Wazey?
- A. Yes, sir.
10. How long ago did you first become acquainted with him?
- A. I don't remember. It has been quite a little while. About seven or eight years ago; maybe longer. I know it's been that long.
11. How long had he been in that country before you met him?
- A. I don't remember; I don't think he had been there long.
13. Where was he living at the time you met him?
- A. I think he was there a right smart little while before he moved his family there and was staying about and I met him several times, but the first place I knew him to live was on Brushy Creek, near Pitkin.
14. Did he have a home there?
- 174 A. Yes, sir; I suppose so.
15. You saw it?
- A. Yes, sir.
16. Then you know it?

A. Yes, sir; I seen him and his family living there, claimin' it to be his home.

17. How long did he live there to your knowledge?

A. Something like two year.

18. Do you know whether or not Nat Wazey ever made a homestead entry in that country?

A. No, sir; I don't know any more than he told me he did.

19. Did he tell you where it was?

A. Yes, sir; on the Widow Graham's place; that was his homestead.

20. Do you know he made that entry?

A. No, sir.

21. Do you know whether he ever commuted it?

A. No, sir.

22. Did he ever come to you and ask that you be one of the witnesses?

A. No, sir.

23. Did he ever come to you and state that he was about to prove up his entry and was about to commute it?

A. No, sir; not that I recollect.

24. Ever come to you with any paper and tell you that this paper was to be used in proof upon his commuting his homestead entry and that he wanted you to sign it as a witness?

(Objected to as leading.)

A. If he did I don't remember it.

25. Did you ever sign any paper at all at his request?

A. I might have, but if I did I don't remember it. I ain't got any education at all and I can't sign my name, but probably I have signed papers for him.

26. How could you sign papers if you cannot sign your name?

A. Whenever I sign a paper someone else signs it and I touch the pen.

27. Ed, do you know this gentleman sitting here?

175 A. Yes, sir; I think I do. I think I have been informed his name is Mr. Kelly.

28. Did you ever see Mr. Kelly in the vicinity of Nat Wazey's homestead at Brushy Creek?

A. I don't remember that I have, but it seems I have met

him betwixt where Mr. Wazey lived and Glenmora in a hack. I am not positive.

29. Anybody else in the hack with him?

A. If it was I don't remember.

30. Did you ever see Mr. Kelly in that vicinity or country on any other occasion?

A. No, sir; I don't think I have.

(At this point counsel for government asks that this testimony be added to the testimony in all the cases.)

(Subject to the right of counsel for defendant to object to it, and for other causes.)

#### Cross-Examination.

By Mr. Monroe:

1. Can you swear positively of your own knowledge that you did not sign Nat Wazey's commutation proof?

A. Yes, sir; if I did I don't know anything about it.

2. You don't know or don't remember?

A. If I signed it I didn't know what I was signing.

3. Have you had any conversation with any official of the government relative to your testimony here?

A. Yes, sir; I don't suppose that I have except with this gentleman.

4. No one else but Mr. Mill?

A. Yes, sir; I have with Mr. Elstner.

5. Did you ever speak to Mr. Goleman about it?

A. No, sir.

6. You never spoke to any government inspector out in that country?

A. No, sir.

7. Any U. S. commissioner?

A. I could have talked with some of those men and not have known it, but not to know it.

8. Aren't you testifying here under the understanding that if you do give your testimony here there will be no prosecution against you?

A. No, sir; it is not.

9. No intimation of that kind made to you?

A. No, sir.

176 10. Ed, have you ever been arrested?  
A. Yes, sir.

11. For what?

A. I was arrested on the charge of being a witness on the Wazey homestead.

12. What happened to that case?

A. I don't know; I gave bond and was put in jail.

13. You was charged with perjury?

A. I don't know what I was charged with.

14. At the time you gave bond did you have any talk with any government official about testifying in that case?

A. If I did I don't remember it.

15. Was it intimated to you that if you would testify in that case that the charge against you would be dropped?

A. No, sir.

16. Was that ever been intimated to you or told to you at any time?

A. I don't think it has.

17. Have you ever been arrested at any other time?

A. No, sir.

18. Do you mean to tell me, Ed Dyal, that you have never been in the penitentiary for the killing of Sam Buxton?

(Objected to on the ground that it is entirely irrelevant and has no tendency to prove or disprove any of the issues in this case.)

(Counsel for defendant suggested that it might have some bearing on the credibility of the witness.)

A. No, sir; not for the killing of Sam Buxton. I thought you meant had I been arrested since that arrest of this land proof. I have been arrested more than twice. I was put in the penitentiary; there was some people's sheep was killed and put in the creek above where me and my father lived and I was put in the penitentiary for that, and I had been arrested for the killing of Sam Buxton, too.)

19. How long a time did you serve in the penitentiary?

A. Nine months.

20. In what year was that?



A. I don't remember; couldn't tell you how long it has been.

21. Was that the only time you have ever been in jail?

A. No, sir; I have been in jail before I was sentenced for the sheep. The first time I was ever in jail was for the killing of Buxton.

22. You were indicted and convicted?

A. I was not convicted. There was a warrant  
177 sworn out and I was arrested and put in jail.

23. What was ever done in connection with that matter?

A. The case was nolleprossed and put out. Pretty certain they never had any trial.

24. You don't know positively whether you were tried and convicted?

A. No, sir; not convicted.

25. What about Pink Buxton?

A. I was only jailed for that. Just accused of being an accessory in the killing.

26. Have you ever been in jail besides the times you have mentioned?

A. No, sir; I don't think I have.

27. Have you ever been arrested besides those times?

A. No, sir; I don't think so.

28. Do you mean you have been in jail so many times you cannot remember how many?

A. I think I have been in mail [jail] five or six times, but all on those cases.

29. Have you ever been indicted for perjury?

A. If I have I don't know it.

30. You cannot swear you have not?

A. No, sir; I cannot.

#### Re-examination.

Mr. Mills:

1. How long prior to the time Nat Wazey came into the country was it that you had this trouble with the killing of Buxtons?

A. I don't remember how long, but it must have been something like seven or eight years.

2. How long prior to the time he came into the country

was it that you were in the penitentiary on account of these sheep?

A. Must have been about—well, anyways six or seven years; something like that. I can't keep up with the dates.

3. Where were you when you were arrested on these charges?

A. In the same neighborhood.

4. These facts are generally known in all that community?

A. Yes, sir.

#### Recross-Examination.

Mr. Monroe:

1. You remember the yellow fever of 1898?

A. No, sir; I don't remember it.

2. Have you any way of fixing when you were in the penitentiary?

A. No, sir; I don't know that I have.

3. How old are you?

A. About 35 or 36 years old.

4. How old were you when you were sent to the penitentiary?

A. I couldn't tell you.

5. You were a grown man?

A. I was just about grown.

6. You had voted already?

A. No, sir; if I had ever voted I don't know it.

7. Over twenty-one?

A. No, sir; I couldn't have been over twenty-one, but somewheres along there.

8. Was the time you were in the penitentiary before the killing of Buxton or afterwards?

A. Afterwards.

179 THOS. C. WINGATE, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Where did you live in March, 1901?

A. In the Town of Leesville, Vernon Parish, La.

2. What was your [your] occupation?

A. At that time I was dealing in timber land principally; buying and selling timber and estimating land.

3. Were you working for any particular company?

A. I could not say that I was. I bought some land for several different companies, but I cannot recall to memory whether I was employed steadily by any one firm.

4. Did you buy and [any] land about that time for the Wright-Blodgett Co.?

A. Well, I bought some for them. I closed up some trades for them, but I cannot say whether it was just in March, 1901, or not. We had so many transactions with people at that time that I cannot tell whether it was in March, 1901, or March, 1900, or March, 1899.

5. Do you remember the first time you ever did any work for W-B. Co.?

A. I can't say that I remember unless I could see the deeds or papers or something to refresh my memory; I could not state positively just when I did the first work for them.

6. In about how many different transactions were you employed by them?

A. I couldn't tell you?

7. Many or few?

A. Very few.

8. What was the nature of these transactions you managed for them? Explain fully as to your dealings, if you were paid for them, by whom and how much.

A. Most of the transactions with the company were in this way: parties would come and want to sell certain land to me. I would not have any money to buy it, and I would know it was lying the Wright-Blodgett territory and would write Mr. Kelly and tell him the description of the land and who offered it and he would write to me and state if he would want to take it and he would give me instructions sometimes to close the trade out on certain pieces of land. He would pay me my commission.

9. Then in all the transactions you had for the company you simply acted as middle man and referred all matters for definite decision to Mr. Kelly?

A. That is correct. I had no authority to cruise the timber or anything of that sort. I would submit the matter to him and he would notify me if he wanted to purchase the property.

10. Do you know of anyone else in that town or  
180 community who was employed by the Wright  
Blodgett Co. in any capacity?

A. Well, I don't know. I think Mr. Boyd and Mr. Wasey and Mr. Dickens.

11. What Boyd was that?

A. Jas. M. Boyd.

12. What made you think that Jas. M. Boyd was employed by Wright-Blodgett Co.?

A. I don't think that at that time he ever told me he was employed for the company, but he has frequently told me in the last few years about doing certain things for Mr. Kelly—go and meet him on business somewhere, and I suppose it was on land matters.

13. Was Boyd also U. S. commissioner there at that time?

A. I don't know whether he was at that time or not, and I don't know even the date when he was commissioner. I know, however, that he was U. S. commissioner at one time.

14. Examine this copy of deed from Jas. D. Stallsby to Wright-Blodgett Co., dated March 26, 1901, and state if that was one of the transactions in which you represented the Wright-Blodgett Co.?

A. I suppose I must have closed this transaction.

15. Does not your name appear on this deed as witness?

A. It does.

16. What name also appears on that deed?

A. Jas. M. Boyd.

17. The party you have been speaking about?

A. Yes, sir; it is.

18. Have you any recollection of how the consideration was paid in this case?

A. No, sir; I cannot, and could not unless I could see the original deed. The reason why I stated a moment ago that I must have closed up this transaction was for the reason that only this morning Mr. Stallsby told me that he sold this land

through me to the Wright-Blodgett Co. I had entirely forgotten the transaction.

19. Mr. Wingate, did you ever in this case, or any other case, buy lands outright for yourself and then turn around and sell them to the Wright-Blodgett Co., or were deeds made direct to the Wright Blodgett Co. and paid for by them?

A. I am sure that I sold Wright-Blodgett Co. some pieces of land that I acquired in my own name and with my own funds.

20. If the papers in this case show that this piece of property transferred from Mr. Hester to Mr. Stallsby to the Wright-Blodgett Co. could you state whether or not you paid for these lands with your own funds or not?

(Objected to as leading.)

A. I have no recollection of paying Mr. Hester nor Stallsby for this tract of land with my own funds.

21. If you did advance the money to Mr. Stallsby  
181 to pay for this tract of land do you know whether or not you were reimbursed by Wright-Blodgett Co.?

(Objected to as leading, calling for the opinion of the witness and suggestive of the answer.)

A. I think I can answer that positively because the Wright-Blodgett does not owe me a cent, and if I ever was advanced anything on their account they reimbursed me.

22. State whether or not it was your custom in these matters after you had been notified by Kelly and authorized to go ahead and make the trade for the company, did you not on some occasions advance the money or give your personal check for the payment of these lands and afterwards be reimbursed by the Wright-Blodgett Company?

(Objected to as irrelevant.)

A. I generally had authority from Mr. Kelly to make draft on him through the bank to pay for the few purchases I made for him. I may have on some few occasions, put up the money myself and afterwards Mr. Kelly would reimburse me.

23. Mr. Wingate, did you ever purchase for your own use

and benefit the property described in this deed from Stallsby to Wright-Blodgett Co.?

A. I did not.

24. Did you know Nat Wasey?

A. I did.

25. Did you ever have any conversation with him in regard to the business of the Wright-Blodgett Co.?

(Objected to as hearsay.)

A. I have.

26. Do you know that he was employed by the Wright-Blodgett Company?

(Objected to as leading.)

A. Yes, sir; he was their agent.

27. How do you know that?

A. Well, from transactions that I would assist him to make, deeds that I would prepare for him and transactions, sales, etc., I would see him make; that is, purchases of property; I supposed by that he was their agent. I would see him buy land and pay for it.

28. That land was for whom?

A. For the Wright-Blodgett Co.

29. You stated that Mr. Dickens was employed as agent for the Wright-Blodgett Co. On what knowledge do you base that statement?

A. Mr. Dickens was employed at one time by the Wright-Blodgett Co.

30. How do you know that?

A. From correspondence and conversations had with him and business transactions with him. Mr. Dickens was Mr.

182 Kelly's, I would term it, private secretary. He was stationed at Lake Charles, in the office, kept his books, made his maps, looked after his correspondence. If Mr. Dickens cruised timber or went into the woods and purchased and purchased land I know absolutely nothing about it.

31. In the absence of Kelly who was in charge, in authority, in Lake Charles for W-B Co. during the time Mr. Dickens was employed by them?

A. Mr. Dickens; Pugo & Moss was their counsel. Mr. Dickens would confer with them.

32. Is there any way you can fix the time of employment of Mr. Dickens?

A. No way at all, unless I can see some old papers.

33. Do you know who succeeded him in the office of Wright-Blodgett Co.?

A. I would not be positive, but I think Foster did; Ben Foster, I believe. I am pretty sure that he succeeded Dickens.

34. For how long a time prior to the employment of Foster do you know that Dickens was employed in the office of Wright-Blodgett Co.?

A. I can't say; I don't know. I really don't know whether one year, six months, two years, eighteen months; I couldn't say with any reasonable degree of certainty.

35. Do you know of anyone occupying Mr. Dicken's position prior to his employment?

A. I cannot remember of anyone.

36. Then Mr. Dickens is the earliest office man for Wright-Blodgett Co. you can remember?

A. To my knowledge he was.

37. Can you state in what year it was you first did work for Wright-Blodgett Co. and kept in touch with their office at Lake Charles?

A. To the best of my recollection it was about 1901, or 1900; maybe a little before, or a little after. I cannot possibly remember these little details.

38. In cases where you purchased land upon a mere receiver's receipt for the Wright-Blodgett Co. had you any instructions from them of any kind as to whether you should make any investigation to find out if the law had been complied with by the entryman?

A. No, sir. Mr. Kelly would require me to send him a description of the land and the man's name.

39. Was that all he would require?

A. He would be the judge of the title and the quantity of timber on the land and if the title was not good he would say it was no good and the transaction would be closed up, and if the timber was no good on the land he would state that the timber was not such timber land as he required or cared to buy. He never gave me any instructions as to titles. He was judge of the title and the timber.

40. Did Mr. Kelly ever come personally to Leesville?

A. Yes, sir.

41. Often?

A. Yes, sir.

183 42. Would Mr. Dickens ever come personally to Leesville?

A. Yes, quite frequently.

43. Have you any knowledge of the scope of the employment of Nat Wazey by the Wright-Blodgett Co.; his duties and authority?

(Objection made to any testimony this witness may give not derived from any personal knowledge but from hearsay.)

A. Mr. Wasey was employed to look after the land of the Wright-Blodgett Co., as I understand it; to purchase timber, to prevent trespass on their lands.

44. Where was he located?

A. Located the majority of the time in the neighborhood of Sigler or Slabtown.

45. You think he was their field man?

(Objected to as leading.)

A. Yes, sir; I think so.

(Stenographer's Note: At this point Mr. Mills instructed me to insert all of Mr. Wingate's testimony in each of the several cases.)

#### Cross-Examination.

Monroe:

1. You never knew or heard of Jim Boyd being in the employ of Wright-Blodgett Co. until after Nat Wazey went crazy in 1904, did you?

A. No, sir. That was the first I knew of his employment. If he was employed before that time I have no knowledge of it.

2. In this Stallsby transaction, relative to which you were examined, will you look at two letter, both dated March 24, 1901, which I hand you and ask if you recognize them?

A. I wrote this letter on March 24, 1901, which is signed by me.



3. Did you make the penciled memoranda on the letter signed by Stallsby?

A. I did.

4. Since reading those letter is your memory refreshed at all in regard to that transaction?

A. Yes, sir; I remember that sale was made.

5. In that transactions, I take it, you were acting in the capacity of a land broker?

A. That was all; I got 25 cents an acre commission. I brought the seller and purchaser together.

6. They knew nothing of each other prior to that time?

A. Yes, sir.

7. It was your service in making them acquainted with each other that you received 25 cents an acre?

A. Yes, sir.

184 (These letters filed and marked "W-B Co. Hester 1" and W-B Co. Hester 2.")

8. You say at the time this sale was made you knew nothing about the Hester claim being a homestead case at all?

9. And that impression was conveyed to the Wright-Blodgett Company?

A. The letter shows what I conveyed to them.

10. Mr. Wingate, had you any personal knowledge other than what you heard from people as to what the employment of Mr. Wasey was by the Wright-Blodgett Co.?

A. Well, I will answer that of course I was bound to know he was Wright-Blodgett's agent, because I had business with them, and he had business with them.

11. You knew he had business with them to a certain extent; but do you know his authority?

A. That I know nothing about; he might have been without certain powers that I thought he had.

12. That same condition would be applicable to Mr. Dickens, would it not? You don't know of your own knowledge what his authority and power was?

A. I don't know the extent of his powers; I knew he transacted business for them, but I don't know the extent of his authority.

13. And I take it that the business Wasey did that you knew positively about was in connection with the closing up of

deals for the purchase of land—that is to say, when the actual deed was being signed?

A. Yes, sir; I saw money paid over by him.

14. You knew that it was the custom of Wright-Blodgett Co., as Mr. Moss of Pugo & Moss testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; they were Mr. Kelly's instructions. He told me, that at any time he should happen to be away that if I had an abstract made and sent to Pugo & Moss and if Pugo & Moss passed on the abstract the draft would be paid. Pugo & Moss passed on all their abstracts.

15. They didn't purchase any land until Pugo & Moss approved the title?

A. That was my understanding.

16. You know also that Dickens defaulted and left the country suddenly while in the employ of Wright-Blodgett Co.?

(Objected to on the ground of irrelevancy.)

A. I don't know; I have heard that.

17. You know that they hunted for him without being able to find him?

(Objected to the ground of irrelevancy.)

A. I have heard he was hunted for; I don't know that he was.

18. Didn't persons from Wright-Blodgett Co. ask if you knew where he was?

A. Mr. Kelly told me he was trying to find him, but had not been able to locate him.

19. He never has been able to locate him?

A. Not to my knowledge.

20. Mr. Foster stated while on the stand that when he left the employ of Wright-Blodgett Co. he was succeeded by Mr. Livingstone. Is that correct?

A. I never had any business with Livingstone. I have heard of Livingstone being with Wright-Blodgett Co., but I don't know anything about him.

21. What I want to find out is whether Livingstone was employed before or after Foster.

A. He was employed after. I don't now [know] nothing about the employment.

22. You know, Mr. Wingate, as a timber man, do you not, that it is a custom with all large timber concerns to have an estimate of a great tract of land made by timber cruisers, as J. D. Lacy & Co., and after having an estimate made they buy on the strength of that estimate, relying on that estimate as to the statement of the amount of timber on that land?

(Objected to on the ground of irrelevancy and for the reason that the custom of other companies and the transactions of their business has nothing to do with this case.)

A. The Wright-Blodgett Co. had their own cruise. It was my understanding and my observation that the majority of large timber holders that move into a territory for the purpose of acquiring land generally have their own employes to cruise the timber and it is customary for them to cruise all the timber in the community lying contiguous and that they use this information from time to time on a basis of value.

23. They come in and cruise all the timber in that locality?

A. Yes, sir; it saves money and time.

24. All cruises are done at the same time when they come into the country?

A. Yes, sir.

#### Re-examination.

(Mills:)

1. You state that you did not know that the Stallsby case was based on homestead entry on which receiver's receipt alone had been issued?

A. I got the impression some way that that was some old claim.

2. You would not pass upon titles in these cases?

A. No, sir.

3. You state that before making purchase the Wright-Blodgett Company required an abstract and submitted it to their attorneys?

A. Yes, sir; in all the deals I closed up for Mr. Kelly it was his instructions that I make abstract of title, or cause the same to be done; that I make draft on him through the First

National Bank of Lake Charles, or the Calcasieu National Bank, and send the abstract of title to Pugo & Moss; that if Pugo & Moss found the title to be correct they would authorize the bank to honor the draft.

186 4. Every abstract was made in this case and examined in a case in which the title was based on a receiver's receipt the abstract would show that?

A. Yes, sir.

5. Then, if the company pursued in this case the custom which you have outlined they would know full well before they made this purchase that this title was based on a receiver's certificate.

A. The abstract would show the receiver's certificate.

6. Mr. Monroe has asked you about the disappearance and the default of Dickens and whether or not Kelly came and made inquiries about it. Who do you consider the best witness as to those facts?

A. Mr. Kelly is the best witness.

#### Recross-Examination.

Monroe:

1. Don't you remember that Mr. Kelly was not in this country, that he was out on the Pacific coast at the time of Dickens' default, and it was only a great deal later that he came down and inquired about him?

A. Yes, sir; I heard Kelly was absent at the time.

2. Then Kelly would have no personal knowledge about it?

A. No, sir.

3. Did Pugo & Moss wire you about Dickens at the time?

A. I believe they did. The [they] notified me that he had skipped out and was no longer authorized to attend to their business.

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In Case No. 382—J. J. Hicks.

Counsel for government offers in evidence certified copies under seal of the general land office, Department of the Interior, of all papers filed and all receipts issued in the matter of the homestead entry of J. J. Hicks, No. 21228, and asks that same be filed and marked "Exhibit B."

## In Case No. 382—J. J. Hicks.

Counsel for Wright Blodget Company offers patent from United States government to J. J. Hicks, marked "Hicks 1"—abstract and opinion of Pugo & Moss, marked "Hicks 2"; and the testimony of C. D. Moss.

(Which abstract and opinion of Pugo & Moss is filed subject to the objection offered by counsel for government at the time of the taking of the Moss testimony.)

Case closed by plaintiff and defendant.

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(To be inserted at end of each case.)

## AGREEMENT.

It is agreed by the counsel for the government and counsel for defendant that all testimony shall be taken at the present sitting, except otherwise agreed upon; that the cases shall be argued and submitted at the May term of Court in Lake Charles, and that thereafter the Court may render judgment either in vacation or term time as best suits its convenience, it being understood that in cases of appeal either side will accept service.

It is admitted that both the government and the defendants in these cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him.

189      DEMAND THAT OTHER DEFENDANTS JOIN  
APPELLANTS IN APPEAL.

Filed June 10, 1912.

LEROY B. GULOTTA,  
Clerk U. S. District Court, Western District of  
Louisiana.

June 7th, 1912.

Mrs. Launa E. Hicks, individually and as tutrix to her children,  
Wm. H. Hicks, Bessie May Hicks, James Earl Hicks,  
Sherman Otis Hicks, Lucile Hicks, Mary Alvie Hicks and  
Harold Burdeth Hicks,  
Leesville, Louisiana.

Dear Madam:

The undersigned counsel for the Wright-Blodgett Company, Ltd., hereby demand that you shall join them in a petition of appeal which they propose making to the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, in the case of the United States of America, Complainant, vs. Mrs. Launa E. Hicks, Individually and as Natural Tutrix to Her Children, Wm. H. Hicks, Bessie May Hicks, James Earl Hicks, Sherman Otis Hicks, Lucile Hicks, Mary Alvie Hicks and Harold Burdeth Hicks, Heirs of Jas. J. Hicks, Deceased, and Wright-Blodgett Company, Limited, No. 365 of the docket of the said Court, seeking an appeal to the United States Circuit Court of Appeals from a decree entered by said Circuit Court in said cause on the 5th day of May, 1912.

The petition will be presented in said Court at Shreveport, Louisiana, on the 10th day of June, 1912, at eleven o'clock, and if you fail to assent to this request at that time, such failure to assent to this request will be considered as a refusal to join in said bill.

HALL & MONROE and  
MITCHELL & YOUNG,  
Attorneys Wright-Blodgett Co., Ltd.

June 8th, 1912.

I, the undersigned, do hereby certify that I am well acquainted with the widow and heirs of James J. Hicks, and that I served the original letter, of which the above is a copy, on the said Mrs. Launa E. Hicks, individually and as tutrix to her

minor children, by handing to her personally, and received from her personally the attached reply which she signed in my presence.

W. W. THOMPSON.

Exhibit "A."

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190 REFUSAL OF DEFENDANTS TO JOIN IN  
APPEAL

Filed June 10, 1912.

LEROY B. GULOTTA,  
Clerk, U. S. District Court, West. Dist. of  
Louisiana.

Lake Charles, La., June 8th, 1912.

Messrs. Hall, Monroe & Lemann,  
and Mitchell & Young, Attorneys,  
Wright-Blodgett Co., Ltd.,  
City.

Gentlemen :

I acknowledge receipt of your letter of June 7th, demanding that I join with the Wright-Blodgett Company, Ltd., in a petition of appeal, which they propose to make to the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, in the case of the United States of America, Complainants, vs. Mrs. Launa E. Hicks, Individually and as Natural Tutrix to Her Children, Wm. H. Hicks, Bessie May Hicks, James Earl Hicks, Sherman Otis Hicks, Lucile Hicks, Mary Alvie Hicks, and Harold Burdeth Hicks, widow and heirs of Jas. J. Hicks, Dec'd., and Wright-Blodgett Company, Ltd., No. 365 of the docket of the said Court.

I do now decline to join in said appeal.

Yours truly,

MRS. LAUNA E. HICKS, Individually and as  
Tutrix for the Heirs of Jas. J. Hicks,  
Deceased.

Exhibit "B."

191 In the District Court of the United States for the  
Western District of Louisiana, Fifth Circuit of  
the United States.

United States of America

vs.

No. 382. In Equity.

J. J. Hicks and the Wright Blodgett Company, Limited.

To the Honorable the Judges of the Said Court:

The petition of the Wright Blodgett Company, Limited, defendant in the above entitled and numbered cause, with respect represents:

That they conceive themselves aggrieved by the decree entered in this cause on the sixth day of May, 1912, and that they desire to and hereby appeal the said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and present herewith and make part of this petition, as Exhibit "A" hereto, assignments of error in said decree.

That J. J. Hicks, defendant herein, has departed this life, leaving as his heirs Mrs. Laura E. Hicks, widow, and their minor children, Wm. H. Hicks, Bessie May Hicks, James Earl Hicks, Sherman Otis Hicks, Lucile Hicks, Mary Alvie Hicks and Harold Burdeth Hicks, whom plaintiff has not seen fit to make parties to this suit.

That petitioner, as appears by the demand and notice annexed to and made part of this petition as Exhibit "A," has summoned the said parties and each of them to join it in this

192 appeal, and they and each of them have declined, the whole as appears by their letters attached hereto as Exhibits B.

That by reason of the premises, your petitioners are entitled to a severance of this appeal from the said J. J. Hicks and his heirs.

Wherefore, the pretises considered petitioners pray that their appeal may be allowed to operate as a supersedeas, upon the giving of a bond with surety, in an amount to be fixed by the Court and conditioned according to law, and that a transcript of the whole record, proceedings, testimony and papers upon which the said decrees were made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit, in the manner and form and at the time prescribed by law and by the practice of this Court.



That citation issue to the United States of America and the said J. J. Hicks, and all other necessary parties in the manner and form prescribed by law, and that your petitioners have such further relief as may be necessary in the premises.

HALL, MONROE & LEMANN,

Attorneys for Petitioner.

### ORDER.

Upon the filing and reading of the foregoing petition, it is ordered that the appeal and supersedeas and citation and service and severance and relief above prayed for, be allowed upon petitioner's giving bond, according to law, with good and sufficient surety, in the sum of (\$2000.00) two thousand dollars; to be approved by the clerk of this Court. This appeal to be returnable into said Court according to law.

ALECK BOARMAN, Judge.

In open court at Shreveport, La., June 10, 1912.

193 Indorsed: No. 382. In Equity. U. S. Dist. Court, West, Dist. of Louisiana. United States vs. J. J. Hicks and Wright-Blodget Co., Ltd. Petition and Order Granting Appeal. Filed June 10, 1912. Leroy B. Gulotta, Clerk U. S. Dist. Court, West, Dist. of La.

Citation and service of same and further notice of appeal waived.

E. H. RANDOLPH,

U. S. Attorney.

# ASSIGNMENT OF ERRORS ON BEHALF OF THE WRIGHT BLODGETT COMPANY, LIMITED, AP- PELLANTS.

In the District Court of the United States for the Western  
District of Louisiana, Fifth Circuit of the United States.

United States of America

vs.

No. 382. In Equity.

J. J. Hicks and the Wright Blodgett Company, Limited.

Now comes the Wright Blodgett Company, Limited, and assigns the following errors committed by the Court to its prejudice in the decrees and orders herein appealed from and prays that said decrees and orders may be reversed and set aside.

194           1. The Court erred in declaring that the patent issued to J. J. Hicks on April 1st, 1902, to the land described in the petition was null and void and ordering the appellant to surrender, deliver and return same, and restraining and enjoining the appellant from ever claiming or asserting any right, benefit privilege or advantage whatsoever unto the said patent.

2. The Court erred in finding that in purchasing land for value from the holder of a final receipt or certificate, this appellant was bound to hunt for grounds of doubt and make a searching inquiry as to the validity of his vendor's claims to the property.

3. The Court erred in failing to find that it was incumbent upon the plaintiff to prove:

1. That there was fraud in the original entryman.
2. That the Wright Blodgett Co., Ltd., had actual notice thereof at the time that it purchased the property.

4. The Court erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

2. "So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipts, the deeds of the entrymen to C and the deeds of C to C1, it was as open to the officers of the government as to C1, if indeed he knew anything about those dates, yet, they seem to have suspected nothing, and he was advised by reputable counsel that the titles were good and bought only on his advice."

5. The Court erred in failing to find that the Wright Blodgett Company, Ltd., was a purchaser in good faith, for value, and without actual or other notice of the fraud, if any, in the original entrymen.

6. The Court erred in failing to find that the Wright Blodgett Co., Ltd., being a purchaser for value in good faith, without actual notice, was entitled to hold the land under its patent regardless of the fraud *vel non* in the original entrymen.

7. The Court erred in finding that complainant has proven in this record that there was any fraud or violation of the law in the original entrymen.

195 8. The Court erred in failing to find that complainant admitted that: "It is admitted that Mr. Hicks was a man of unquestioned good standing in the community, so far as known to the United States attorney or his assistant." That Hicks left on the land in question, houses, rail fences, two acres of land cleared and cultivated, a fireplace, an orchard, a well, a hog pen, etc., and caused crops to be cultivated thereon; that he honestly thought he was in every respect fulfilling the law and so swore and in failing to find that in view of these circumstances there was nothing to put anyone on notice that Hicks and his witnesses perjured themselves when they swore that they had complied with the law.

9. The Court erred in failing to dismiss the bill, since knowledge of the asserted fraud is alleged by the bill to have been acquired only through J. M. Boyd and Nat Wasey, and the proof shows that neither had any connection with the matter.

10. The Court erred in finding that an applicant who has

in good faith complied with U. S. R. S. 2290 was without right prior to final proof under U. S. R. S. 2301 to contract to convey his land on receipt by him of final receipt.

11. The Court erred in considering the question referred to in assignment 13 at all since the same was not raised in the bill and was seasonably objected to when raised in the evidence.

12. The Court erred in finding that the Wright Blodgett Co., Ltd., or anyone authorized to represent them, contracted with Hicks to purchase his land prior to the receipt by him of his final receipt.

13. The Court erred in failing to disregard and exclude all evidence attempting to show knowledge of fraud in the Wright Blodgett Company, Ltd., through persons other than Nat Wasey and J. M. Boyd, the persons through whom only the bill avers that knowledge to have been acquired.

14. The Court erred in failing to dismiss the bill.

196           Wherefore, appellant prays that these assignments of error may be maintained and that the decrees complained of may be reversed, annulled and set aside or amended with costs.

HALL, MONROE & LEMANN,  
Solicitors for Wright Blodgett Co.

Indorsed: No. 382. In Equity. U. S. Dist. Court, West. Dist. of La. U. S. vs. J. J. Hicks and Wright Blodgett Co., Ltd. Assignment of Errors. Filed June 10, 1912. Leroy B. Gulotta, Clerk, U. S. Dist. Court for West. Dist. of La.

United States District Court,  
Western District of Louisiana.

The United States of America  
versus No. 382. In Equity.  
Joe J. Hicks and The Wright Blodgett Co., Ltd.

Know all men by these presents, that we, The Wright-Blodgett Company, Limited, of Saginaw, Michigan, as principals, and the United States Fidelity and Guarantee Company of Baltimore, Maryland, as surety, are held and firmly bound unto the United States of America in the full and just sum of two thousand (\$2,000.00) dollars, to be paid to the United States of America, or to any person or persons authorized to receive same, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 10th day of June, in the year of our Lord, one thousand nine hundred and twelve.

Whereas, lately at a session of the District Court of the United States for the Western District of Louisiana, in a suit pending in said Court between said United States of America and Joe J. Hicks, and the Wright-Blodgett Company, Limited, a decree was entered against the said defendant, Joe J. Hicks and the Wright-Blodgett Company, Limited; the said Wright-Blodgett Company, Limited, having obtained from the said Court an order allowing an appeal and supersedeas to the United States Circuit Court of Appeals, to reserve the decree of the aforesaid suit, and a citation directed to the said United States of America to be issued, citing and admonishing the said United States of America to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana.

Now, the conditions of the above obligation is such, that if the said Wright-Blodgett Company, Limited, shall prosecute therein said appeal to effect, and shall answer all damages and

costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

[Seal]

THE WRIGHT-BLODGETT CO., LTD.,  
By WATTS K. LEVERICH, Attys.  
THE UNITED STATES FIDELITY &  
GUARANTY CO., OF MARYLAND.  
By WM. M. FORD, Atty. in Fact.

Approved June 10th, 1912.

LEROY B. GULOTTA,  
Clerk, U. S. District Court, Western District of  
Louisiana.

Indorsed: No. 363. United States District Court, Western District of Louisiana. The United States of America versus Joe J. Hicks and The Wright Blodgett Co., Ltd. Appeal Bond, \$2,000.00. The United States Fidelity & Guaranty Co. of Maryland, Surety. Filed Jun. 10, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

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## CLERK'S CERTIFICATE.

United States of America.

United States District Court for the Western District of  
Louisiana.

Clerk's Office:

I, LEROY B. GULOTTA, clerk of the United States District Court for the Western District of Louisiana, do hereby certify, that the foregoing 198 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had and evidence adduced in the cause entitled United States of America versus J. J. Hicks and The Wright-Blodgett Company, Limited, No. 382, in Equity, of the docket of the United States District Court, formerly United States Circuit Court, for the Western District of Louisiana, said transcript being made in accordance with the praecipe filed by Messrs. Hall, Monroe & Lemann, solicitors for appellant.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 6th day of July, A. D. 1912.

LEROY B. GULOTTA,

[Seal]

Clerk, United States District Court for  
the Western District of Louisiana.

That, thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz.:

ARGUMENT AND SUBMISSION.

Extract From the Minutes of January 23rd, 1913.

Wright-Blodgett Company, Limited,  
versus

The United States of America.

No. 2410

On this day this cause was called, and, after argument by J. Blanc Monroe, Esq., for appellant, and E. H. Randolph, Esq., United States Attorney, for appellee, was submitted to the Court.



## OPINION OF THE COURT.

Filed February 18th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett &amp; Co., Ltd.,

vs.

No. 2407.

The United States.

Boyd's Case.

Wright-Blodgett &amp; Co., Ltd.,

vs.

No. 2408.

The United States.

A'ken's Case.

Wright-Blodgett &amp; Co., Ltd.,

vs.

No. 2409.

The United States.

Bryers' Case.

Wright-Blodgett &amp; Co., Ltd.,

vs.

No. 2410.

The United States.

Hicks' Case.

Wright-Blodgett &amp; Co., Ltd.,

vs.

No. 2411.

The United States.

Allen's Case.

Appeals From the United States District Court for the Western District of Louisiana.

Before PARDEE, Circuit Judge, and NEWMAN and GRUBB, District Judges.

By the COURT.

The above entitled and numbered cases are separate appeals from separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that

Wright, Blodgett & Company, vendees of the alleged homesteaders, are charged through their active agents on the ground with knowledge of the fraud.

The decree in each of the above mentioned cases is affirmed.

# JUDGMENT.

Extracts From the Minutes of February 18, 1913.

Wright-Blodgett Company, Limited,

versus

The United States of America.

No. 2410.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of said District Court in this cause, be, and the same is hereby affirmed.

# PETITION FOR REHEARING.

Filed March 8th, 1913.



# United States Circuit Court of Appeals

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No. 2410.

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**WRIGHT-BLODGETT COMPANY, LIMITED,**  
(Hicks Case)

Appellant,

versus

**UNITED STATES OF AMERICA,**  
Appellee.

---

To the Honorable the Judges of the United States Circuit  
Court of Appeals, Fifth Circuit:

The petition of **Wright-Blodgett Company, Limited**,  
appellee herein, with respect shows:

That a rehearing should be granted in this case, for  
this, to-wit:

## I.

There is a fatal variance between complainant's allegata and his attempted probata. It is complainant's duty, under the **Clark case**, 200 U. S. 607, to show actual notice in the **Wright-Blodgett Company, Limited**, of

any alleged fraud. Assuming that burden, complainant in his bill charged actual notice in the Wright-Blodgett Company, Limited, through two designated agents, to-wit: Nat Wasey and James M. Boyd. Defendant came into Court to try the issue so presented, fully prepared to show that it had no notice through Nat Wasey or J. M. Boyd. Complainant, however, made no attempt whatever to prove the allegation of the bill, but attempted to show that the Wright-Blodgett Company, Limited, had received notice through other and different agents. Timely objection to this variance was made by defendants, as follows:

Transcript, page 21:

“It objects to any attempt to show knowledge in it other than through the persons and in the manner specified in the bill, on the ground that same is irrelevant and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this case.” (172 Fed. 950, last ten lines.)

Transcript, pages 18 and 19:

“The bills having charged that the Wright Blodgett Company, Limited, did have knowledge of the fraud charged, through a certain individual or individuals (specifically naming them) defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy and asks that same be stricken out.”

This objection should, we submit, be maintained, and any attempt to show notice by any person other than the

ones named in the bill should be excluded. If, however, the testimony as to notice through other people than Wasey and Boyd be excluded, there remains no testimony, since there was no serious attempt made to show notice through either Wasey or Boyd. That the variance above pointed out is fatal, the following cases demonstrate:

172 Fed. 948, *U. S. v. Barber Lbr. Co.*,  
9 Pet. 483, *Harrison v. Nixon*,  
10 Pet. 177, *Boone v. Chiles*.  
19 How. 303, *Briars v. Surget*.  
9 Wall. 788, *Rubber Co. v. Goodyear*,  
35 Fed. 455, *Phelps v. Elliott*,  
*Boston R. R. Co. v. Parr*, 104 Fed., 695.  
107 Fed. 972, *Kennedy v. Custer*,  
167 Fed. 770, *McKinney v. Big Horn Basin*  
*Co.*

## II.

The complainant's bill charges actual notice of the alleged fraud in the Wright-Blodgett Company, through Nat Wasey and J. M. Boyd, naming them by name. There is not even an attempt made in this record by the complainant to prove this allegation. Without proof of this allegation complainant cannot prevail.

## III.

The complainant's bill charges actual notice of the alleged frauds in the Wright-Blodgett Company. The burden of proof was upon the complainant to prove this

charge. We submit that in the case at bar it has not done so.

**Wherefore**, Petitioner prays that a rehearing may be granted herein. And for general relief.

J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHELL,  
Solicitors for Petitioner.

I, **J. Blanc Monroe**, do hereby certify that I have carefully read the foregoing petition for rehearing and that in my judgment same is well founded.

New Orleans, La., March. 6. 1913.

*J. Blanc Monroe*

## ORDER DENYING REHEARING.

Extract From the Minutes of March 18, 1913.

|                                |           |
|--------------------------------|-----------|
| Wright-Blodgett Company, Ltd., |           |
| versus                         | No. 2410. |
| United States of America.      |           |

Ordered that the petition for rehearing filed in this cause, be, and the same is hereby denied.

## PETITION FOR APPEAL, AND ORDER.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

|                                  |            |
|----------------------------------|------------|
| Wright-Blodgett Company Limited, |            |
| (Hicks Case)                     | Appellant, |
| vs.                              | No. 2410.  |
| The United States of America,    |            |
|                                  | Appellee.  |

To the Honorable the Judges of the United States Circuit Court of Appeals, Fifth Circuit:

Now, comes the Wright-Blodgett Company, Limited, by its undersigned solicitors, and complains that in the record and proceedings, and also in the rendition of the decree of the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, in the above styled and numbered cause, on the 18 day of February, 1913, which decree was made final by rehearing being denied on the 18 day of March, 1913, and which decree affirmed the decree of the United States Circuit (now District) Court, for the Western District of Louisiana, in said cause, manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the Circuit Court of the United States for the Western District of Louisiana depended upon the fact that the suit was brought by the United States of America and arose under the Public Land Laws of the United States, the defendant, appellant, relying for its defense upon said



laws and the construction heretofore placed upon them by the Supreme Court of the United States; that the amount involved therein and the matter in controversy exceeds the sum of one thousand dollars (\$1000.00) besides costs, and that this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final.

Wherefore, petitioner prays for an allowance of the appeal, to the end that the cause may be carried to the Supreme Court of the United States. And petitioner prays for a supersedeas of said judgment, and such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

(Signed) WRIGHT-BLODGETT CO., LTD.  
 (Signed) J. BLANC MONROE,  
 (Signed) MONTE M. LEMANN,

Solicitors.

Service accepted and citation waived.

(Signed) E. H. RANDOLPH,  
 U. S. Atty.

March 24, 1913.

#### ORDER.

Appeal and supersedeas allowed and bond fixed in the sum of \$500 conditioned as the law directs.

This the 25th day of March, 1913.

(Signed) DON A. PARDEE, Judge.

## ASSIGNMENT OF ERRORS.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

|                                   |            |
|-----------------------------------|------------|
| Wright-Blodgett Company, Limited, |            |
| (Hicks Case)                      | Appellant, |
| vs.                               | No. 2410.  |
| The United States of America,     |            |
|                                   | Appellee.  |

## ASSIGNMENT OF ERRORS.

The Wright-Blodgett Company, Limited, appellant, by its undersigned solicitor, in connection with its petition for appeal herein, presents this, its assignment of errors, and says:

That the decree made and entered on the 15th day of February, 1913, by the Circuit Court of Appeals of the United States, for the Fifth Circuit, in the case styled Wright-Blodgett Company, Limited, Appellant, vs. The United States of America, Appellee, No. 2410 of the docket of said Court, is erroneous and against its just rights, in the following particulars, to-wit:

(1) The Circuit Court of Appeals erred in declaring the patent issued by the United States to J. J. Hicks on April 1, 1902, to the land described in the bill of complaint, null and void, and in ordering this appellant to surrender, deliver and return same, and in restraining and enjoining this appellant from ever claiming or asserting any right, benefit, privilege, or advantage whatsoever under said patent.

(2) The Circuit Court of Appeals erred in finding that any fraud in the homestead entry had been proven by the complainant.

(3) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Company, Limited, were charged, through their active agents on the ground, with knowledge of fraud in the homestead entry.

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(4) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated by this Court in the Maxwell Land Grant case, where the Court said:

"We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt."

(5) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

"So far as any inference was to be drawn from the nearness of the respective dates of the receivers' receipts, the deeds of the entryman to C and the deeds of C to C1, it was as open to the officers of the Government as to C1, if indeed he knew anything about those dates. Yet they seem to have suspected nothing and he was advised by reputable counsel that the titles were good and bought only on his advice."

(6) The Circuit Court of Appeals erred in failing to disregard and eliminate all evidence of notice of fraud in the Wright, Blodgett Company, Ltd., through agents other than J. M. Boyd and Nat Wasey. The bill designated these two men as the persons through whom the actual notice of the alleged fraud had been received, and the Wright-Blodgett Company, Ltd., made timely objection to any evidence seeking to show notice otherwise than through them.

(7) The Circuit Court of Appeals erred in failing to find a fatal variance between complainant's allegata and attempted probata.

(8) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Co., Ltd., was charged with notice of facts known to Nat Wasey or J. M. Boyd, or any one else, until it was proven that such persons were the agents of

the Wright-Blodgett Company, Ltd., and that such facts related to matters within the scope of their authority.

(9) The Circuit Court of Appeals erred in failing to find that the entryman was admitted by counsel for complainant to be a man of unquestioned good standing in the community in which he lived, and in failing to find that this entryman of unquestioned good standing and his witnesses swore that they had complied with the law and that the entryman left on the land houses, rail fences, two acres of land cleared and cultivated, a fireplace, an orchard, a well, a hog-pen, etc., and in failing to find that these mute and written evidences of compliance with the law were sufficient to have deceived a vendee.

(10) The Circuit Court of Appeals erred in finding that the land officials of the United States were deceived by the entryman and the evidences of compliance with the law left by the entryman upon the land, and in failing to find that the Wright, Blodgett Co., Ltd., which was confronted with the same statements and same evidences, were not similarly deceived.

(11) The Circuit Court of Appeals erred in failing to dismiss the bill.

Wherefore, appellant prays that the decree herein complained of may in these respects be reversed and corrected, and that appellant may have an adjudication and decree in its favor, in accordance with law and equity, as herein specified.

|          |                           |
|----------|---------------------------|
| (Signed) | J. BLANC MONROE,          |
| (Signed) | MONTE M. LEMANN,          |
| (Signed) | A. R. MITCHEL,            |
|          | Solicitors for Appellant. |

## APPEAL BOND.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett Company, Limited,  
(Hicks Case)Appellant,  
No. 2410.

vs.

The United States of America, Appellee.

Know All Men By These Presents: That we, the Wright-Blodgett Company, Limited, as principal, and the United States Fidelity & Guaranty Company of Maryland, as sureties, acknowledge ourselves to be jointly indebted unto the United States of America, and Joe J. Hicks, his heirs and assigns, appellee in the above cause, in the sum of five hundred 00/100 dollars, conditioned that whereas, on the 18 day of February, 1913, in the Circuit Court of Appeals of the United States, for the Fifth Circuit, in a suit depending in that Court, wherein the United States of America was plaintiff, appellee, and the Wright-Blodgett Company, Limited, was appellant, numbered on the docket of that Court as above, a decree was rendered against the said Wright-Blodgett Company, Limited, and the said Wright-Blodgett Co., Ltd., having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the Clerk of Court, to reverse the said decree, and a citation directed to the said United States of America and the said Joe J. Hicks, citing and admonishing each of them to be and appear at a session of the Supreme Court of the United States, to be holden in the City of Washington, in the District of Columbia, on the 24 day of April, next.

Now, if the said Wright-Blodgett Company, Limited, shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) WRIGHT-BLODGETT CO., LTD.  
(Signed) UNITED STATES FIDELITY &  
GUARANTY CO.,

By (Signed) WILLIAM H. KLINESMITH,  
Its Attorney in Fact.

Approved.

(Signed) DON A. PARDEE, Judge.

## CLERK'S CERTIFICATE.

United States of America.

United States Circuit Court of Appeals, Fifth Circuit.

I, FRANK H. MORTIMER, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 175 to 187 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2410, wherein Wright-Blodgett Company, Limited, is appellant, and the United States of America is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 174 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 11th day of April, A. D. 1913.

[Seal]

FRANK H. MORTIMER,  
Clerk of the United States Circuit Court of Appeals.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2410.

WRIGHT-BLODGETT COMPANY, LIMITED, Appellant,  
(Hicks Case)

vs.

THE UNITED STATES OF AMERICA, Appellee.

UNITED STATES OF AMERICA:

The President of the United States to Laura E. Hicks, individually and as tutrix of the minor children of the late J. J. Hicks, Greeting:

You are hereby notified that in a certain case in equity in the United States Circuit Court of Appeals, in and for the Fifth Circuit, wherein the United States of America is Complainant, and the Wright-Blodgett Company, Limited and yourself are defendant, an appeal has been allowed the Wright-Blodgett Company, Limited, therein, to the Supreme Court of the United States. You are hereby cited and admonished to be and appear in said Court at Washington, D. C., within thirty days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 25th day of March, 1913.

DON A. PARDEE,

*Circuit Judge.*

STATE OF LOUISIANA,

*Parish of Vernon:*

On this, the 2nd day of April, A. D. 1913, personally appeared before the undersigned authority, W. W. Thompson, who being duly sworn, deposes and says:

That he delivered a copy of the within citation to Laura E. Hicks on the 2nd day of April, 1913, at Leesville, Louisiana, by handing same to said person in person.

W. W. THOMPSON.

Sworn to before me this 2nd day of April, 1913.

[Seal H. H. Pye, Notary Public, Vernon Parish, La.]

H. H. PYE.

*Notary Public, Vernon Parish, La.*

[Endorsed:] No. 2410. In the United States Circuit Court of Appeals, Fifth Circuit. Wright-Blodgett Company, Ltd., versus United States of America. Citation of Appeal to Laura E. Hicks, Individually and as Tutrix of the minor children of the late J. J. Hicks, and Marshal's Return. U. S. Circuit Court of Appeals. Filed Apr. 4, 1913. Frank H. Mortimer, clerk.

Endorsed on cover: File No. 23,644. U. S. Circuit Court Appeals, 5th Circuit. Term No. 1069. Wright-Blodgett Company Limited appellant vs The United States. Filed April 19th, 1913.

2

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

No. 1070. 152

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WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

THE UNITED STATES

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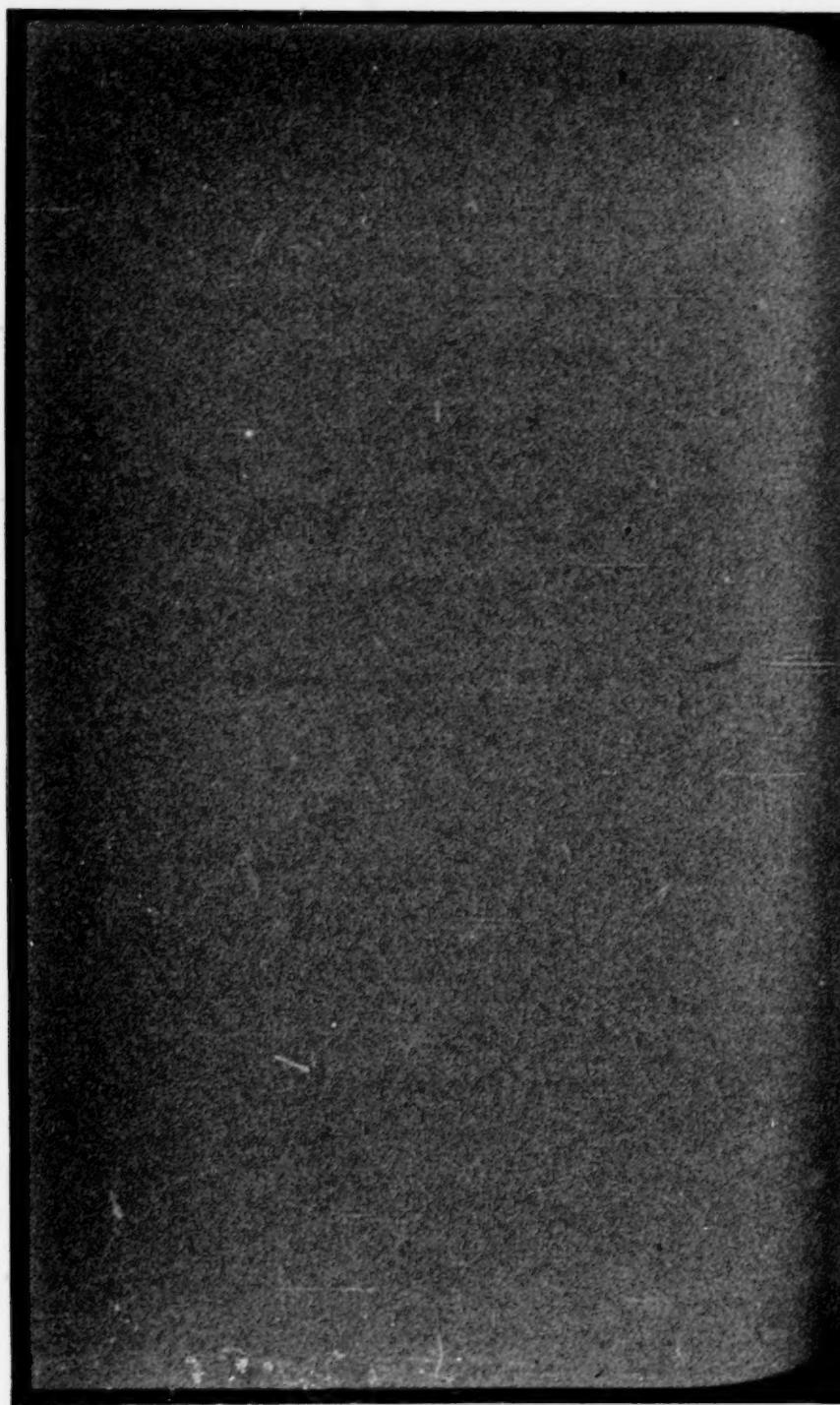
APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE FIFTH CIRCUIT

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FILED APRIL 19, 1915.

(23,645)





(23,645)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1070.

WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA.

United States Circuit Court of Appeals, Fifth Judicial Circuit.

PLEAS AND PROCEEDINGS had and done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, before the Honorable Don A. Pardee, Circuit Judge, and the Honorable William T. Newman and the Honorable William I. Grubb, District Judges:

WRIGHT-BLODGETT COMPANY, LIMITED,

Appellant,

versus

THE UNITED STATES OF AMERICA,

Appellee.

BE IT REMEMBERED, that heretofore, to-wit, on the 3rd day of August, A. D. 1912, a transcript of the Record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said Transcript was filed and docketed in said Circuit Court of Appeals as No. 2411, as Follows:



UNITED STATES DISTRICT COURT, FOR THE WEST-  
ERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA

versus No. 383. In equity

WALTER O. ALLEN, AND THE WRIGHT-BLODGETT  
COMPANY, LIMITED.

APPEALED FROM THE UNITED STATES DISTRICT  
COURT, FOR THE WESTERN DISTRICT OF  
LOUISIANA, TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS, FOR THE FIFTH CIRCUIT.

TRANSCRIPT.

Hon. E. H. Randolph, United States Attorney, Hon. Lowell  
C. Butler, Asst. U. S. Attorney, Solicitors for Complain-  
ant, Appellee.

Messrs. Hall, Monroe & Lemann, Messrs. Mitchell & Young,  
Solicitors for The Wright-Blodgett Company, Limited,  
Defendant, Appellant.



4 (In the Circuit Court of the United States for the  
Fifth Circuit and Western District of Louisiana.)

THE UNITED STATES OF AMERICA, COMPLAINANT,

versus

No. 383. In equity

WALTER O. ALLEN, AND THE WRIGHT-BLODGETT  
COMPANY, DEFENDANTS.

To the Honorable Judges of the Circuit Court of the United  
States for the Fifth Circuit and Western District of Lou-  
isiana, in equity:

William H. Moody, Attorney General of the United States, for and in behalf of the United States of America, files this bill of complaint against Walter O. Allen, a citizen of and residing within the Parish of Vernon, State of Louisiana, and of the Western District thereof, and the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile and principal place of business at Saginaw, in the State of Michigan, defendant herein, and thereupon your orator complains and says:

First. That the defendant, Walter O. Allen, on the 10th day of April, A. D. 1899, under and by virtue of the provisions of Sections 2289 and 2290 of the Revised Statutes of the United States, filed in the local land office of the United States at Natchitoches, Louisiana, his application, No. 7682, to enter the following described lands: The Southeast quarter of Section Eight (8), Township Two (2) North, Range Five (5) West, La. Mer., Natchitoches Land District, Vernon Parish, Louisiana, containing one hundred and sixty-one & 25/100 acres.

Second. That at the time of filing his said application to enter said lands and premises, and contemporaneously therewith, the said defendant, Walter O. Allen, likewise filed in the said land office, as required by law, his affidavit and statement in writing under oath, in which, among other things, he stated and deposed that his said application to enter said lands as a homestead was honestly and in good faith made for the purpose of actual settlement and cultivation, and that he would

faithfully and honestly endeavor to comply with all the requirements of the law as to settlement, residence and cultivation, and that he would faithfully and honestly

5 endeavor to comply with all the requirements of the law as to settlement, residence and cultivation neces-

sary to acquire title to said lands so applied for, and that he had not and did not apply to enter said lands for the purpose of speculation, but in good faith to acquire a home for himself. That thereupon, the said defendant, then and there, paid to the receiver of the said land office the sum of twenty-one and 15/100 dollars, being the amount of fees and compensation then and there due the register and receiver of said land office for the entry of said lands, and the price of the excess in said lands over the area entered under the homestead act and upon said payment having been made as aforesaid, two receipts were then and there issued by the said receiver and delivered to the said defendant for the amounts so paid, and attached to and connected with one of said receipts a notation, setting forth in detail the requirements of the law to be observed and complied with by said defendant in order to obtain title to the said lands so applied for to be entered by him, as follows, to-wit:

"Note—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the five years he must file proof of his actual residence and cultivation, failing to do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land-warrants upon making proof of settlement and cultivation from date of filing affidavit to time of payment.

Third. That thereupon, in order to entitle the said defendant to obtain and procure from the United States a patent for said tract of land under the homestead laws of the United States, it was incumbent on him, and he was required to make actual settlement on said lands, and reside thereon and cultivate the same for a period of five years from and after the

filing of his said application and affidavit, hereinbefore mentioned and referred to, or in case said defendant did not desire to remain on said lands the full period of five years, to make payment for said lands at the expiration of fourteen months from and after the filing of his said application and affidavit, upon making proof before the register and receiver of the said land office at Natchitoches, Louisiana, of settlement upon and cultivation of said lands by said defendant from the date of the filing of said application and affidavit down to the time of payment. That for the purpose of availing himself of the privilege, afforded by the laws in such cases made and provided,

6 of purchasing the said lands after the expiration of fourteen months from and after the filing of his said application and affidavit, as aforesaid, the said defendant, Walter O. Allen, on the 11th day of June, 1901, appeared before James M. Boyd, then and there a United States Commissioner, at Leesville, Vernon Parish, Louisiana, together with his witnesses, M. C. Bass and W. J. Bass, due notice having been given as required by law, and offered proof before the said James M. Boyd, United States Commissioner, as aforesaid, that he had settled upon the said lands and premises, and actually resided thereon and cultivated the same as required by and within the meaning of the homestead laws of the United States, and then and there gave, made out and signed his deposition, and swore to the same before the said James M. Boyd, United States Commissioner, as aforesaid, and soon thereafter, to-wit, on the 2nd day of July, 1901, filed and caused to be filed the said deposition and sworn statement in the said United States Land Office at Natchitoches, Louisiana, the said land office being then and there the proper United States Land Office of the Land District wherein said lands are situated, and then and there offered, presented, delivered and filed the said deposition and sworn statement to and with the register and receiver of the said land office as proof of the settlement and residence upon, and the cultivation of the cultivation of the said lands and premises by the said defendant, as required by law, and the same was accepted and received by the register and receiver of the said land office for the purpose for which they were offered.

Fourth. And your orator sheweth unto your Honors, that the said defendant, in said deposition and sworn statement,

made, signed and sworn to by him as aforesaid, and offered, presented, delivered to and filed with the said register and receiver, and accepted by them as proof of the settlement and residence of the said defendant upon said lands, and of the cultivation of the same by him, among other things, testified and deposed that he established his actual residence upon said lands on the — day of April, 1899; that he had not been absent from said lands since establishing his actual residence thereon down to the time of making his said proof; that he had cultivated about two acres of said lands, and raised two crops thereon, and that he had at the time of making his said proof put improvements, consisting of houses, stables and fruit trees on said lands to the value of one hundred dollars. That

7 the said defendant procured from each of his said witnesses a like deposition and sworn statement, taken before the said James M. Boyd, United States Commissioner, as aforesaid, on the said 11th day of June, 1901, the same in effect and corroborative and in aid of the said deposition and sworn statement, made, signed and sworn to by him, the said defendant, as aforesaid, and filed the same with defendant's own deposition and sworn statement, in the land office of the United States, at Natchitoches, Louisiana, as proof of the settlement and residence upon, and the cultivation of said lands by said defendant as required by law, and all of said depositions, testimony and sworn statements of the defendant and his said witnesses, so made, signed and sworn to as aforesaid, were, and each of them was, then and there, taken and accepted by the said register and receiver of the said land office as proof of the settlement and residence of the said defendant upon and the cultivation by him of the said lands and premises. That thereupon, on the 8th day of July, 1901, the said defendant paid to the said receiver of the said land office the sum of four hundred dollars, being payment for said lands at the rate of two and 50/100 dollars per acre for said lands, and thereupon the said receiver, then and there issued to said defendant his final receipt No. 21233, for the said moneys so paid to him by the said defendant in payment for said lands, and the register of the said land office, likewise, then and there, issued to the said defendant his certificate No. 21233, certifying that in pursuance of law the said defendant had purchased said lands, and that upon presentation of said certificate to the Commissioner of the General Land Office the said defendant should be entitled

to receive a patent for said lands hereinbefore more particularly described and set forth. That thereafter such proceedings were had that on the 5th day of July, 1902, a patent was issued to said defendant for said lands, which said patent was duly delivered to said defendant and received by him.

Fifth. And your orator further sheweth unto your Honors, that the said acceptance of the said deposition and testimony of the said defendant and of his said witnesses as proof of the settlement and residence of the said defendant upon said lands, and the cultivation of the same by him, as required by law, by the said register and receiver, and the issuance of the said final receipt, and the issuance of the said certificate of purchase, as hereinbefore set forth, and the issuance of said patent for the said tract of land by the United States, were done by the said officers of the said land office, and the officers of your  
 8 orator, the United States, in reliance by them, and each of them, upon the truth of the testimony and statements contained in the said deposition of the said defendant, and in reliance by them, and each of them, upon the truth of the testimony and statements contained in the depositions of his said witnesses, and in reliance upon the good faith of said defendant and his said witnesses and not otherwise.

Sixth. And your orator avers, that the said deposition of the said defendant, and the depositions of his said witnesses, were, and each of them was, false and fraudulent, as was then and there well known to the said defendant and each of his said witnesses, and made with the intent to deceive the officers of the United States, and with the intent to fraudulently obtain a patent to the said lands, by means of the false and fraudulent testimony and statements contained in said depositions and testimony in this, to-wit: That the defendant did not establish his actual residence upon said lands or any part thereof, on the — day of April, 1899, or at any time, or at all; that he had not resided upon said lands continuously from the — day of April, 1899, down to the 11th day of June, 1901, the date of making his said proof; that he had not cultivated about two acres of said land, or any part thereof, and raised two crops thereon; or raised any crop thereon at all; and that he had not at the time of making his said proof put improvements on said lands, consisting of houses and fruit trees, to the value

of one hundred dollars, or improvements to any value at all. But your orator alleges the fact to be that the defendant never did make a settlement of said lands, or any part thereof, and never did establish his residence on said lands, or any part thereof, and never raised two crops thereon, or any crops at all; and never cultivated about 2 acres of said land or any part thereof and never put improvements on said lands at all of any value at all; and each and every of the statements so made by the said defendant and his said witnesses, as hereinbefore specifically mentioned and set forth, which are contained in said depositions and testimony to prove settlement and residence by said defendant on said lands, and the cultivation of the same by him, as required by the homestead laws of the United States, are utterly false, fraudulent and untrue in every particular, as he, the said defendant then and there well knew.

Seventh. And your orator charges and alleges that the said testimony of the said defendant, and the testimony of his said witnesses, contained in said depositions made by them, and each of them, as aforesaid, was false, fraudulent and untrue in the respects and in the several particulars as hereinbefore set forth,

9           and the same was made, offered and filed as proof of the settlement and residence of the said defendant on said lands, and of the cultivation of the same, as aforesaid, for the false and fraudulent purpose of imposing upon and deceiving the register and receiver of the said United States land office at Natchitoches, Louisiana, and to cause and induce the officers and agents of your orator, the United States, to believe that the statements and testimony contained in the depositions were true, and that the said defendant had in fact established a settlement and residence upon said tract of land, and had cultivated the same as by law required, and for the purpose of obtaining by means of fraud and deceit the issuance to said defendant a patent for the lands hereinbefore described.

And your orator further sheweth unto your Honors, that the said defendant, Walter O. Allen, by means of said false and fraudulent depositions and the false and fraudulent statements and testimony contained therein, given under the sanction of an oath of the said defendant and his said witnesses, imposed upon and deceived the said officers and agents of the United States, and caused and induced them to believe that the

testimony and statements contained in said depositions were true, and that the defendant had actually resided upon said lands, and had cultivated the same in the manner and to the extent as stated in said depositions. And that the said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in the said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements, so falsely and fraudulently given and made by the said defendant and his said witnesses, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent, and during the period of time, as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt, and said certificate of purchase of said lands, and the issuance of the United States patent therefor by the said officers of the United States, as hereinbefore set forth, and the delivering of the said patent to the defendant.

Eighth. And your orator further sheweth unto your Honors, that the existence of said patent, so fraudulently obtained and procured by the said defendant, as  
 10       aforesaid, on its face entitles the said defendant to exercise the right of absolute ownership of and over the lands hereinbefore mentioned and described, and to assert a title to the same to which he is not entitled. That if the said patent remains uncanceled and in force, it can be used in fraud of your orator and all persons relying thereon, as a valid and subsisting conveyance of the legal title to said lands and premises, all of which acts and doings are contrary to equity and good conscience and done to the manifest injury of your orator.

Ninth. And your orator further sheweth unto your Honors, that the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, having its domicile and principal place of business at Saginaw, in the State of Michigan, is now asserting title to the said lands so falsely and fraudulently obtained and procured to be patented to the said



defendant, Walter O. Allen; that the said company is asserting title to said lands by reason of an act of sale from the said defendant, Walter O. Allen, to the said Wright-Blodgett Company, of date July 10th, 1901, and recorded in book "S," page 546 of the records of the Clerk's office of the Parish of Vernon, Louisiana, for the purported consideration of eight hundred dollars. Your orator avers and charges that at the time of making said sale, or pretended sale, to the said Wright-Blodgett Company, as aforesaid, the said defendant, Walter O. Allen, had no title, either real or apparent, to the land sought to be conveyed by the said act of sale; that said act of sale was made to the said Wright-Blodgett Company more than eleven months before the issuance to him by the United States of the said patent to said land, and that, therefore, the said lands were not the lands of the said defendant, Walter O. Allen, but were the lands of the United States; and your orator further sheweth unto your Honors, that the subsequent issuance of the said patent to the said defendant, Walter O. Allen, could not, and did not, inure to the benefit of the said Wright-Blodgett Company, by reason of the said act of sale, or pretended act of sale, for the reason that said patent was so obtained, as hereinbefore set forth, by the false and fraudulent methods therein described and charged. Your orator further charges and avers that at the time of said sale or pretended sale by the said defendant, Walter O. Allen, to the said Wright-Blodgett Company, as aforesaid, and prior thereto, and up to and including the dates of making said false and

11       fraudulent proof of the residence upon and the cultivation of said lands by the said defendant and his said witnesses, and of the issuance of said final receipt and said certificate of purchase, and since then, and up to the time of the issuance of said patent, one James M. Boyd, and one Nat Wasey, were, and each of them was, an agent of the said Wright-Blodgett Company, and entrusted by it in the investigation, solicitation and purchase of lands for its use and benefit; and that the said Wright-Blodgett Company, by and through its said agents, and each of them, was well advised of, and knew, each and every detail of the acts and things done and committed, as hereinbefore set forth, and described, by the said defendant, Walter O. Allen, and his said witnesses, for the unlawful and inequitable purpose of obtaining by such false and fraudulent methods the issuance of said patent; and your



orator avers and charges that the said Wright-Blodgett Company, so well knowing and being advised of said false and fraudulent acts and doings on the part of the said defendant, Walter O. Allen, and his said witnesses, did, through its officers, whose names are to your orator unknown, and therefore not hereby given and set forth, aid, assist, advise and encourage the commission of each and every of said acts and things, with the fraudulent purpose of obtaining title to said lands hereinbefore described. For these reasons your orator avers that the said act of sale, as hereinbefore set forth, from the said defendant, Walter O. Allen, to the said Wright-Blodgett Company, should be cancelled, annulled, set aside and held for naught by the decree of your Honors, as contrary to equity and good conscience, and to the manifest injury of your orator.

For as much as your orator can have no adequate relief except in this Court, and to this end that the defendants, and each of them, may, if he can, show why your orator should not have the relief hereby prayed, and make a full disclosure and discovery of the matters aforesaid, and according to the best of his knowledge, remembrance, information and belief, true, direct and perfect answer make, each of them, to the matters herein stated and charged, but not under oath, an answer under oath being hereby expressly waived.

And your orator prays that a decree be entered by this court, declaring null and void the said patent to the said defendant, Walter O. Allen, for said lands and premises, and requiring, directing and compelling the said defendant, Walter O. Allen, to surrender and deliver up, and return the said patent to your orator, and that he be forever and perpetually

12        restrained and enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said patent; and your orator prays that the act of sale from the said defendant, Walter O. Allen, to the said Wright-Blodgett Company be declared null and void and of no effect, and that the said Wright-Blodgett Company be forever and perpetually restrained and enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said act of sale; and that the said defendant, and each of them, be held to pay into the treasury of your orator all such reasonable sums of money as it may be found necessary to lay out and expend in and about discovering the fraud,

as hereinbefore set forth and charged, and that your orator may have all such further relief in the premises as may be conformable to equity and good conscience, and as such may seem proper to this Honorable Court.

May it please your Honors to grant unto your orator a writ of subpoena of the United States of America, issued out of and under the seal of this court, directed to the said defendant, Walter O. Allen, and to the said Wright-Blodgett Company, through its proper officers, and each of them, on a day certain to appear and answer to this bill of complaint, and to abide and perform such order and decree in the premises as the Court shall deem proper and required by the principles of equity and good conscience.

WILLIAM H. MOODY,

Attorney General of the United States.

MILTON C. ELSTNER,

U. S. Attorney, Western District, Louisiana.

United States of America,  
Western District of Louisiana.

Milton C. Elstner, being first duly sworn, deposes and says: That he is the regularly appointed, qualified and acting United States Attorney for the Western District of Louisiana; that he has read the foregoing bill of complaint, and that the matters and facts therein stated and alleged are true to the best of his knowledge, information and belief.

MILTON C. ELSTNER.

Subscribed and sworn to before me this 4th day of December, A. D. 1906.

W. JACKSON,

Clerk of the United States Circuit Court, Fifth  
Circuit and Western District of Louisiana.

Indorsed: No. 383. U. S. Circuit Court. United States vs. Walter O. Allen, et al. Bill of complaint. Filed Dec. 4th, 1906. W. Jackson, Clerk.

13

United States of America.

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States

To the Marshal for the Western District of Louisiana—  
Greeting:

You are hereby commanded to summon the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile at Saginaw, in the State of Michigan, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the third Monday of May, 1907, then and there to answer a bill in chancery, filed against it, wherein the United States is complainant, and Walter O. Allen and the Wright-Blodgett Company are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 4th day of December, in the year of our Lord one thousand nine hundred and six, and the 130th year of American independence.

[Seal]

W. JACKSON, Clerk.

The defendant, the Wright-Blodgett Co., is hereby notified that it is required to enter its appearance in the Clerk's office of the United States Circuit Court, at Lake Charles, La., on or before the 1st Monday of January, 1907, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: No. 383. United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 383. United States vs. Walter O. Allen, et al. Subpoena in chancery.

# Marshal's Return.

Marshal's Docket No. 481. Dec. 4, 1906.

Received Dec. 4, 1906, and served by delivering, in person, a certified copy hereof to Mitchell & Young, Attys. for Wright-Blodgett Co., at Lake Charles, La., Dec. 6, 1906.

A. C. LEA,

U. S. Marshal.

By B. INGOUF,

Deputy.

Filed Dec. 6, 1906.

W. JACKSON, Clerk.

14

United States of America.

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States

To the Marshal for the Western District of Louisiana—  
Greeting:

You are hereby commanded to summon Walter O. Allen, a citizen of and residing in the Parish of Vernon, State of Louisiana, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the Third Monday of May, 1907, then and there to answer a bill in chancery, filed against him, wherein the United States is complainant, and Walter O. Allen and the Wright-Blodgett Company, are defendants.

Herein, fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 4th day of December, in the year of our Lord one thousand nine hundred and six, and the 130th year of American independence.

[Seal]

W. JACKSON, Clerk.

The defendant, Walter O. Allen, is hereby notified that he is required to enter his appearance in the Clerk's office of the United States Circuit Court, at Lake Charles, La., on or before the 1st Monday of January, 1907, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: No. 383. United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 383. United States vs. Walter O. Allen, et al. Subpoena in chancery.

#### Marshal's Return.

Marshal's Docket No. 481, Dec. 4, 1906.

Received in office at Alexandria on the 11th day of Dec., 1906, subpoena in chancery for the within named witness, and on the 14th day of Dec., 1906, I made service by delivering into the hand of the within-named Walter O. Allen, personally, a certified copy of the within subpoena in chancery.

U. L. STEWART,

Dy. Marshal.

Filed Dec. 15th, 1906.

E. C. JACKSON,

Dy. Clerk.

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15 In the Circuit Court of the United States for the Western District of Louisiana.

United States

vs.

No. 383. In Equity.

Walter O. Allen, et al.

Now comes Wright-Blodgett Company, Limited, herein made defendant as Wright-Blodgett Company, in the above entitled proceeding, and, through undersigned counsel, enters its appearance herein as required by the rules of equity practice.

MITCHELL & YOUNG,

Attys. for Defendant.

Indorsed: No. 383. In the Circuit Court of the United States for the Western District of Louisiana. United States vs. Walter O. Allen, et al. Appearance of Wright-Blodgett Co. Filed Dec. 17, 1906. W. E. Cline, Dy. Clerk.

16        In the Circuit Court of the United States for the  
              Fifth Circuit and Western District of Louisiana,

The United States of America, Complainant,

vs.                                No. 383. In Equity.

Walter O. Allen, and Wright-Blodgett Company, Ltd.,  
              Defendants.

The answer of the Wright-Blodgett Company, Limited, one of the defendants to the bill of complaint of the United States of America, plaintiff, sayeth:

1. That the matters and things set forth in the first, second, third, fourth and fifth articles of the bill of complaint are true.

2. That if the matters and things set forth in the sixth and seventh articles of the bill of complaint be true and if the depositions of Walter O. Allen and his witnesses were false and fraudulent, and made with purpose to deceive, as alleged, said falsity and fraud and purpose to deceive were and are absolutely beyond the knowledge of this defendant, who equally with the officers and agents of the United States credited and believed said acts and depositions and acted upon the faith thereof in good faith.

3. That the matters and things set forth in the eighth article of the bill of complaint are true to this extent: That the patent issued as alleged to Walter O. Allen did entitle the said defendant to exercise the right of absolute ownership of and over the said lands heretofore mentioned and described and assert a title to same. That said defendant did so assert a title thereto and did transfer the said title to respondent who required same in good faith for adequate consideration, without notice either actual or constructive. That if said title was acquired by fraud, respondent had no knowledge of the same, nor had it reason to suspect such fraud.

4. That the matters and things set forth in the ninth article of the bill of complaint are untrue in this: That it is true that Walter O. Allen transferred the said lands to respondent on July 10th, 1901, but that it is untrue that was then without real or apparent title thereto, the fact being that at the time the right to a patent had become vested in said Allen, so that he held the full equitable title and the equivalent of the full apparent and legal title, and that the subsequent is-

17      suance of the patent was a mere ministerial act, which, however, inured to respondents' benefit.

Defendant especially denies that Nat Wasey or James M. Boyd, or Walter O. Allen, or the witnesses of Walter O. Allen, have been or are its agents, entrusted with the investigation, solicitation and purchase of lands for its use and benefit; that it through them, or otherwise, knew of the alleged fraudulent acts and statements set forth in the bill of complaint, and it emphatically and especially denies that it did, through its officers or otherwise, aid, assist, advise and encourage the commission of the alleged fraudulent acts or have knowledge of or suspect any fraud therein, but respondent avers that as alleged in the bill of complaint, its domicile is in Saginaw, Mich.; that it dealt with Allen in the premises in good faith and at arm's length; that he held what they believed and were advised was a good title to the lands, which title they acquired in good faith, for a valuable consideration.

Respondent especially denies that it entered into or had knowledge of any conspiracy against the United States in regard to said land and specifically sets forth that until the service of process upon it in this suit, it had no knowledge of and no reason to suspect the claims herein urged.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied as true to the knowledge and belief of this defendant. All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MITCHELL & YOUNG, and  
HALL & MONROE,  
Solicitors for Defendant.

Indorsed: No. 383. United States vs. Walter O. Allen, et al. Answer of Wright-Blodgett Co., Ltd. Filed March 15, 1907. W. E. Cline, Dy. Clerk. Ent. Chancery Order Book, folio 356.

18 In the Circuit Court of the United States for the  
Fifth Circuit and Western District of Louisiana.

United States of America, Complainant,  
vs. No. 383. In Equity.  
Walter O. Allen, and the Wright-Blodgett Company,  
Defendants.

Whereas, the bill in equity in the above entitled cause was filed in this Court on the fourth day of December, 1906, and a subpoena was duly issued and served upon me, in this cause as required by law, and I do not desire to defend the said action; therefore, I hereby consent that the said bill, in so far as it applies to me, be taken pro confesso; and the complainant may attach this stipulation and confession to the said bill, and the same to be binding and conclusive on me, this defendant.

W. O. ALLEN.

Indorsed: No. 383. United States vs. W. O. Allen and Wright-Blodgett Co. Consent Pro Confesso of W. O. Allen. Filed Dec. 22, 1908. Leroy B. Gulotta, Clerk. Noted in C. O. Book, folio 490.

19 Circuit Court of United States for the Fifth Circuit,  
Western District of Louisiana.

United States of America  
vs. No. 383.  
W. O. Allen and the Wright-Blodgett Co., Ltd.

In the above numbered and entitled cause, the following agreement is entered into between M. C. Elstner, United States attorney, and J. Blanc Monroe, attorney for the Wright-Blodgett Co., Ltd.:

It is hereby agreed, between the parties to this case that at the Lake Charles term of the United States Circuit Court for the Western District of Louisiana, beginning December 21st, 1909, or thereabouts, all the testimony, evidence, and documents heretofore offered by both sides shall be filed in



court, subject to objections made and to be made to same, at Alexandria term of the Court. This agreement to be filed in the record. Cases to be continued if Monroe in Washington or for other legal cause.

M. C. ELSTNER,  
J. BLANC MONROE.

Dec. 20, 1909.

Indorsed: No. 383. In Equity. U. S. Circuit Court for Fifth Circuit and Western District of Louisiana. United States vs. W. O. Allen and the Wright-Blodgett Company, Ltd. Agreement Between the U. S. Attorney, and J. Blanc Monroe, Atty. for the Wright-Blodgett Company, Ltd. Filed at Lake Charles, La., December 22, 1909. Leroy B. Gulotta, Clerk, U. S. Circuit Court.

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United States of America

vs.

W. O. Allen & Wright-Blodgett Co.

No. 383. In Equity. U. S. Circuit Court.

It appearing to the Court that the bill of complaint in this case was filed in this Court on the 4th day of December, 1906, and that a subpoena was issued and served upon W. O. Allen, one of the defendants herein; and it appearing further that the said W. O. Allen, on the 23rd day of December, 1908, made his appearance in this Court and entered and caused to be filed herein his written consent and the bill of complaint be taken pro confesso as to him, and that a decree be signed canceling and annulling the patent mentioned in said bill to the lands herein granted by the United States to him; therefore, by reason of said consent, and by reason of the law and the evidence being in favor thereof, it is ordered, adjudged and decreed that the patent issued by the United States of America to the said W. O. Allen for the following described lands, to-wit, the southeast quarter of Section Eight, in Township Two North, of Range Five West, Louisiana, meridian, containing one hundred and sixty-one and 25/100 acres, be, and the same hereby is, cancelled and annulled and declared of no

force and effect. It is further ordered that this defendant pay all costs of this proceeding.

This decree is rendered without prejudice to any rights that may be in the Wright-Blodgett Company, one of the defendants herein.

Thus done, read and signed in open court this 22nd day of December, 1909.

ALECK BOARMAN,  
U. S. Judge.

Indorsed: No. 383. U. S. Circuit Court. United States vs. W. O. Allen and Wright-Blodgett Company. Decree as to W. O. Allen. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana. Recorded in C. O. B., Vol. 2, folio 174.

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21 Circuit Court of United States for the Fifth Circuit,  
Western District of Louisiana.

United States of America

vs.

No. 383.

W. O. Allen and the Wright-Blodgett Company, Limited.

Now comes the Wright-Blodgett Company, Ltd., co-defendant herein, and suggested that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

Wherefore, it now objects to the following testimony and evidence, and moves to strike out same:

1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

2. The bills having charged that the Wright-Blodgett Co., Ltd., had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy, and asks that same be stricken out.

3. There is no allegation in the bills charging invalidity in the entries on the ground that the entryman sold or agreed to sell, prior to making final proofs, hence any attempt to show such a situation would be irrelevant and a variance, and is objected to as such, and motion made to strike same out.

4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock is objected to as irrelevant, and motion made to strike same out.

It appearing that there are filed herein certain letters passing between the department of the government and officials thereof and certain reports of special agents, and same are objected to by the Wright-Blodgett Co., Ltd., on the ground:

1. As not the best evidence and hearsay.
2. As unsworn statements of persons not sworn as witnesses.
3. As *res inter alios acta*, irrelevant and immaterial.

HALL & MONROE,  
MITCHELL & YOUNG.

Indorsed: No. 383. U. S. Circuit Court, Fifth Circuit, Western District of Louisiana. United States of America vs. W. O. Allen and the Wright Blodgett Co., Ltd. Motion. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk.

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22 United States Circuit Court, Fifth Circuit, Western District of Louisiana.

United States  
vs. No. 383. In Equity.  
Walter O. Allen & the Wright-Blodgett Company.

Pursuant to reservation of right, made at the time of the taking of the testimony and the agreement between Milton C. Elstner, and J. Blanc Monroe, on December 22nd, 1909, the Wright-Blodgett Company makes to the testimony offered by complainant, the following objection:

1. It reiterates here every objection noted by it on the stenographer's notes.

2. It objects to any attempt to show knowledge in it other than through the persons and in the manner specified in the bill, on the ground that same is irrelevant, and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this case. 172 Fed. 950. Last ten lines.

3. It objects to the introduction of any evidence of whatsoever nature herein on the ground that indispensable parties and parties proper to be present are not before the Court.

4. It objects to the entire testimony and documentary evidence of the United States as irrelevant. *Res inter alia acta* hearsay, and not the best evidence.

5. It objects to any attempt to show an agreement by the Wright-Blodgett Company to purchase these lands prior to final receipt on the ground that no such attack is made in the bills and the testimony is irrelevant, and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this Court.

Indorsed: No. 383. In Equity. United States Circuit Court, Fifth Judicial Circuit. United States vs. Walter O. Allen and Wright-Blodgett Company. Exception Filed by Wright-Blodgett Company to Certain Testimony. Filed Feb. 25, 1910. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

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23 In the District Court of the United States for the  
Western District of Louisiana, Fifth Circuit of  
the United States.

United States of America

vs.

No. 383. In Equity.

Walter O. Allen, and Wright-Blodgett Company.

This case came on for hearing this — day of May, 1912,  
before the Honorable Aleck Boorman, Judge presiding, and

was heard upon the bill, answers, exhibits, proofs in the case and arguments of counsel, and thereupon, upon consideration thereof, and by virtue of the law and the evidence being in favor thereof, it was ordered, adjudged and decreed as follows:

It is ordered, adjudged and decreed, that the patent described in the bill issued to defendant, Walter O. Allen, on the 5th day of July, in the year 1902, for the southeast quarter (S. E. 1/4), Section Eight (8), Township Two (2) North, Range Five (5) West, La. Mer., containing 161.25 acres, situated in the State of Louisiana, be, and the same is, hereby declared to be null and void for the said lands and premises described in the bill, as aforesaid, and the defendants, Walter O. Allen & Wright-Blodgett Company, be, and are hereby, required and directed to surrender and deliver and return said patent to the United States of America; and it is further adjudged and decreed, that they be forever restrained and enjoined from ever claiming or asserting any right, benefit, privilege or advantage whatsoever under said patent. It is further ordered, adjudged and decreed, that the defendant, pay the costs of this proceeding.

Done, read and signed in open court at Alexandria, Louisiana, on this 6th day of May, 1912.

ALECK BOARMAN,  
U. S. Judge.

Indorsed: No. 383. United States District Court, Western District of Louisiana. United States vs. Walter O. Allen & Wright-Blodgett Company. Judgment. Filed May 6, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

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## PATENT.

The United States of America.

To all to whom these presents shall come, greeting:

Certificate No. 21233.

Whereas, Walter O. Allen of Vernon Parish, Louisiana, has deposited in the general land office of the United States a cer-

tificate of the register of the land office at Natchitoches, Louisiana, whereby it appears that full payment has been made by the said Walter O. Allen according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto for the southeast quarter of Section Eight, in Township Two North, of Range Five West, of Louisiana meridian in Louisiana, containing one hundred and sixty-one acres, and twenty-five hundredths of an acre, according to the official plat of the survey of the said lands, returned to the general land office by the surveyor general, which said tract has been purchased by the said Walter O. Allen.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Walter O. Allen, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging unto the said Walter O. Allen and to his heirs and assigns forever.

In testimony whereof, I, Theodore Roosevelt, president of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand, at the City of Washington, the fifth day of July, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-seventh.

[Seal]

By the President: T. ROOSEVELT.

By F. M. McKEAN,

Secretary.

Recorded Louisiana, Vol. 127, page 351.

C. H. BURTH,

Recorder of the General Land Office.

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Indorsed: #21233. Entered. Walter O. Allen. Patent. Filed 6 day of Aug., 1902, and recorded 29th day of Sept., 1902, in Vol. No. 1, page 534, Patent Record, Vernon Parish. W. A. Winfree, Dy. Clerk. Filed Mar. 1st, 1909, in U. S. vs. Hicks. J. F. Slattery, M. in Ch.

26      State of Louisiana,  
           Parish of Vernon.

Know all men by these presents, that I, Walter O. Allen (a married man, whose wife is now living) of the Parish of Vernon, State of Louisiana, for and in consideration of the sum of \$800.00, eight hundred dollars, to me in hand paid by Wright-Blodgett Company, Limited, a firm or corporation organized and existing under the laws of the State of Michigan, and domiciled at Saginaw, Michigan, have granted, sold and delivered and by these presents do grant, sell and deliver, with full subrogation to all my rights and actions of warranty against all former owners and vendors unto the said Wright-Blodgett Company, Limited, of the City of Saginaw, and State of Michigan, all that certain lot or parcel of land being situated and lying in the Parish of Vernon and State of Louisiana, and being known and described as follows, to-wit: The southeast quarter (S. E. 1/4) of Section Eight (8) in Township Two (2) North, of Range Five (5) West, La. Mer., containing in all the sum of one hundred and sixty-one and twenty-five hundredths of an acre (161.25), more or less, according to the government survey thereof.

To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Wright-Blodgett Company, Limited, its successors and assigns forever, and I do hereby bind myself and my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Wright-Blodgett Company, Limited, its successors and assigns against any persons whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand at Leesville, Louisiana, in the presence of H. L. Sanders, Jr., and B. F. Koonce, lawful witnesses, on this 10th day of July, anno domini one thousand nine hundred and one (1901).

WALTER O. ALLEN.

Attests:

B. F. KOONCE,  
 H. L. SANDERS, JR.

27      State of Louisiana,  
           Parish of Vernon.

Before me, W. A. Winfree, Dy. clerk and ex-officio, a notary public, in and for said parish and state, on this day personally

appeared Walter O. Allen, to me personally known to be the identical person whose name is subscribed to the foregoing instrument and acknowledged to me in the presence of H. L. Sanders, Jr., and B. F. Koonce, witnesses, that he executed the same on the day of the date thereof, and that it was his own free and voluntary act, for the uses and purposes therein expressed.

Witness my official signature and seal at Leesville, La., on this 10th day of July, A. D. 1901.

W. A. WINFREE,

[Seal] Deputy Clerk & Ex-Officio Notary Public.

Attest:

B. F. KOONCE,

H. L. SANDERS, JR.

Filed for record July 17, 1901. Recorded July 31, 1901.

W. A. WINFREE,

Dy. Clerk & Ex-Officio Recorder.

State of Louisiana,

Parish of Vernon.

I hereby certify that the above and foregoing is a true and correct copy as the same appears on record in my office in the Town of Leesville, said parish and state, in Book "S," at folio 546 & 547.

In testimony whereof, I have hereunto set my hand and affixed my official seal of office on this the 23rd day of February, A. D. 1909.

A. G. WINFREE,

[Seal] Clerk 12th District Court, Vernon Parish,  
Louisiana.

Indorsed: Walter O. Allen to Wright-Blodgett Co. U. S.  
vs. W. O. Allen, et al.



28      06-139636  
          P/N.  
          A.R.  
          J.O.C.

W.H.C.

Department of the Interior,  
 General Land Office,

Washington, D. C., September 25, 1906.

I, W. A. Richards, commissioner of the general land office, do hereby certify that the annexed copies, 1 to 37 inclusive, papers in C. C. E. No. 21233 of Walter O. Allen, Natchitoches, La., land district, together with report of Special Agent Clayton G. Coleman, August 23, 1906, are true and literal exemplifications of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

W. A. RICHARDS,  
 [Seal]      Commissioner of the General Land Office.

29      Application No. 7682.

Homestead.

Department of the Interior,  
 Clerk's Office.

Leesville, La., April 6th, 1899.

I, Walter O. Allen, of Leesville, Vernon Parish, Louisiana, do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the S. E. 1/4 of Section 8, in Township 2 N., of Range 5 West, containing 161.25 acres.

WALTER O. ALLEN.

United States Land Office,

Natchitoches, La., Apl. 10, 1898.

I, J. Ernest Breda, register of the land office, do hereby certify that the above application is for surveyed lands of the class which applicant is legally entitled to enter under Section

2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

J. ERNEST BREDÁ, Register.

Indorsed: No. 7682. Homestead Application. Walter O. Allen. Natchitoches, La., Apl. 10, 1899. Excess Receipt No. 20756. U. S. Land Office, Natchitoches, La. Received on Apl. 10, 1899, at 3 o'clock P. M. Sec. 8, Township 2, Range 5.

30

### Homestead Affidavit.

Department of the Interior,  
United States Land Clerk's Office,

Leesville, La., April 6th, 1899.

I, Walter O. Allen, of Leesville, La., having filed my application No. —, for an entry under Section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any state or territory; that I \*have filed my declaration of intention to become a citizen of the United States, and am the head of a family. That by reason of distance and expense of a trip I am unable to appear at the district land office; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent for any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which I might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890,

I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws.

(Sign plainly with full Christian name.)

WALTER O. ALLEN.

Sworn to and subscribed before me this 6th day of April, 1899, at my office at Leesville, in Vernon County, Louisiana.

Z. T. CRAFT,

[Seal]

Clerk Dist. Court.

\*Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family, or is over twenty-one years of age, as the case may be. It should be stated whether applicant is native born or not, and if not, a certified copy of his certificate of naturalization, or declaration of intention, as the case may be, must be furnished. (See page 45, circular of January 1, 1899.)

31 Receiver's Receipt No. 7682. Application No. 7682.

Homestead.

Receiver's Office, Natchitoches, La., Apl. 10, 1899.

Received of Walter O. Allen the sum of eighteen dollars no cents; being the amount of fee and compensation of register and receiver for the entry of southeast quarter of Section 8, in Township 2 N., of Range 5 W., La. Mer., under Section 2290, Revised Statutes of the United States.

J. S. DIXON, Receiver.

\$18.00

Note—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the

said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and cultivation from the date of filing affidavit to the time of payment.

\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for not other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*See note in red ink, which registers and receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

32 Homestead—Act of May 20, 1862.

(Revised Statutes of the United States, Section 2357.)

Excess. Receiver's Receipt, No. 20756.

Receiver's Office, Natchitoches, La., Apl. 10, 1899.

Received of Walter O. Allen the sum of three dollars fifteen cents, being in full for one acres and twenty-five hundredths of southeast 1/4, Section No. 8, in Township No. 2 N., of Range No. 5 W., La. Mer., being excess in said tract over the area entered under the homestead act, per application and receipt No. 7682.

\$3.15

J. S. DIXON, Receiver.

Indorsed: No. 20756. Excess Receipt. Land Office at Natchitoches, La., April 10, 1899. Walter O. Allen. Homestead Application. No. 7682.

33

## No. 1. Homestead.

Land Office at Natchitoches, La., April 26, 1901.

I, Walter O. Allen, of Hicks P. O., La., who made homestead application No. 7682 for the S. E. 1/4, Sec. 8, T. 2 N., R. 5 W., La. Mer., do hereby give notice of my intention to make final commutation proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before James M. Boyd, U. S. commissioner, at Leesville, La., on June 11, 1901, by two of the following witnesses:

James Spurgeon, of Hicks P. O., La.

M. C. Bass, of Hicks P. O., La.

W. J. Bass, of Hicks P. O., La.

J. W. Lawrence, of Toro P. O., La.

WALTER O. ALLEN.

(Signature of Claimant.)

Land Office at Natchitoches, La., April 26, 1901.

Notice of the above application will be published in the Vernon News, printed at Leesville, La., which I hereby designate as the newspaper published nearest the land described in said application.

J. ERNEST BREDA, Register.

Notice to Claimant—Give time and place of proving up and name the title of the officer before whom proof is to be made; also give names and postoffice address of four neighbors, two of whom must appear as your witnesses.

Indorsed: 7682. Walter O. Allen. 8....2....5....  
Commutation to Publish April 26, June 11. Vernon News.

34

State of Louisiana,  
Parish of Vernon.

Before me, the authorized authority, on this day personally appeared Geo. F. Smedley, editor of the Vernon News, Lees-

ville, Louisiana, who first being duly sworn, says that notice of Final Com. Proof of Walter O. Allen, H. E. No. 7682, first appeared in its issue of May 2nd, 1901, and each weekly issue thereafter for 30 days, last publication appearing in the issue of June 11, 1901.

GEO. F. SMEDLEY, Editor.

Sworn to and subscribed before me at my office at Leesville, La., this the 11th day of June, 1901.

[Seal]

JAMES M. BOYD,  
U. S. Com.

35 Certificate as to Posting of Notice.

Department of the Interior,

United States Land Office,

At Natchitoches, La., June 21, 1901.

I, J. Ernest Breda, register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 26 day of April, 1901.

J. ERNEST BRÉDA, Register.

36 NOTICE FOR PUBLICATION.

Department of the Interior,

Land Office at Natchitoches, La., April 26, 1901.

Notice is hereby given that the following named settler has filed notice of his intention to make final commutation proof in support of his claim, and that said proof will be made before James M. Boyd, U. S. Com. at Leesville, La., on June 11, 1901, viz., H. E. No. 7682, Walter O. Allen, for the S. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz.:

James Spurgeon, of Hicks P. O., La.

M. C. Bass, of Hicks P. O., La.

W. J. Bass, of Hicks P. O., La.

J. W. Lawrence, of Toro P. O., La.

J. ERNEST BREDÁ, Register.

37 (To be used in cases of commuted homestead entries. For taking the testimony of claimant and his witnesses in making commutation proof, use the prescribed forms for "Homestead Proof.")

### Affidavit Required of Claimant.

(Section 2301 of the Revised Statutes of the United States.)

I, Walter O. Allen, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 7682, made upon the S. E. 1/4 S. E. 1/4, Section Eight (8), Township Two (2) N., Range 5 W., La. Mer., do solemnly swear that I made settlement upon said land on the — day of April, 1899, and that since such date, to-wit, on the 11 day of June, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated about two acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except.....

(Sign plainly with full Christian name.)

WALTER O. ALLEN.

Subscribed and sworn to before me, this 11th day of June, 1901, at my office at Leesville, in Vernon Ph., Louisiana.

JAMES M. BOYD,

[Seal]

U. S. Com. for W. D. of La.

Indorsed: 7682. Affidavit required of claimant.

38 State of Louisiana,  
Parish of Vernon.

I, Walter O. Allen, do solemnly swear that I will support the Constitution of the United States, and that I absolutely and entirely renounce and adjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty, and especially the English government, and the queen thereof, of which I was before a subject.

I further swear that I have been a resident of the United States more than five years, and a resident of the State of Louisiana for more than twelve months, and well disposed to the good order and happiness of the same.

(Signed) WALTER O. ALLEN.

Sworn to and subscribed before me this 14th day of July, A. D. 1900.

(Signed) JAS. R. MONK,  
Notary Public.

I hereby certify the above and foregoing to be a true and correct copy of the original on file in my office, this the 23rd day of April, A. D. 1901.

J. J. HICKS,  
[Seal] Clerk 12th Dist. Court, Vernon Parish, La.

Filed July 17th, 1900.

W. H. SMART,  
Dy. Clerk.

Indorsed: Oath. Filed July 17, 1900. W. H. Smart, Dy. Clerk.

39 To the Honorable J. B. Lee, Judge of the 12th Judicial District Court, of Louisiana, in the Parish of Vernon:

The petition of Walter O. Allen, a resident of your said Parish of Vernon and state aforesaid, would, with respect represent that he is a native borned citizen of the Dominion of Canada; that he is 35 years of age, and has lived in the United States continually for the past twelve years.



That is [it] has been, and is now, his bona fide intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly the British government, and the queen thereof, and that he will support the Constitution of the United States and of the state of which he may reside.

Wherefore, he prays to be permitted to produce the required proof before your Hon. Court, and after final hearing had, for judgment decreeing him to be a naturalized citizen of the United States, and for general relief.

(Signed) JAMES R. MONK,  
Attorney for Petitioner.

I hereby certify the above and foregoing to be a true and correct copy of the original on file in my office, this the 23rd day of April, A. D. 1901.

J. J. HICKS,  
[Seal] Clerk Dist. Court, Vernon Parish, La.

Filed Feby. 5th, 1900.

W. H. SMART,  
Dy. Clerk.

40 In this case Walter O. Allen having applied to become a naturalized citizen of the United States, and the law governing such cases having been complied with, and the evidence adduced being in his favor, it is

Therefore ordered, adjudged and decreed that he be, and he is hereby naturalized as a citizen of these United States and is vested with all and singular the privileges of a native born citizen thereof.

Thus done, read and signed in Chambers on this the 17th of July, A. D. 1900.

(Signed) J. B. LEE,  
Judge 12th Dist. Court of La.

I hereby certify the above and foregoing to be a true and correct copy of the original on file in my office, this the 23rd day of April, A. D. 1901.

J. J. HICKS,  
[Seal] Clerk 12th Dist. Court, Vernon Parish, La.  
(10c Revenue Stamp.)

Filed July 17th, 1900.

W. H. SMART,  
Dy. Clerk.

Indorsed: Judgment. Filed July 17, 1900. W. H. Smart,  
Dy. Clerk.

41 Homestead Proof—Testimony of Witness.

I, M. C. BASS, being called as witness in support of the homestead entry of Walter O. Allen, for S. E. 1/4 Sec. 8, Tp. 2 N., R. 5 W., La. Mer., testifies as follows:

Ques. 1. What is your name, age, and postoffice address?

Ans. M. C. Bass, 23 years, Hicks P. O. Vernon Ph. La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am. S. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Ordinary pine land, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. April, 1899, and established actual residence at the same time.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. They have.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent at all.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 9. What improvements are on the land, and what is their value?

Ans. One dwelling house, 14x14, chimney, gallery, crib and stables, also fruit trees. Valued at \$100.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

42 Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he has.

M. C. BASS.

(Sign plainly with full Christian name.)

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 11th day of June, 1901, at my office at Leesville, in Vernon Ph., Louisiana.

(See note on fourth page.)

JAMES M. BOYD,

[Seal]

U. S. Com. for W. D. of La.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

#### 43 Homestead Proof—Testimony of Witnesses.

I. W. J. BASS, being called as a witness in support of the homestead entry of Walter O. Allen for S. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer., testifies as follows:

Ques. 1. What is your name, age and postoffice address?

Ans. W. J. Bass, 29 years, Hicks P. O., Vernon Ph. La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am. S. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Ordinary pine land, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. April, 1899, and established actual residence at the same time.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. They have.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent at all.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 9. What improvements are on the land, and what is their value?

Ans. One dwelling house, 14x14, chimney, gallery, crib, stables and fruit trees, valued at \$100.00.

Ques. 10. Are there any indications of coal, 44 salines, or minerals of any kind on the homestead?

(If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you

think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he has.

W. J. BASS.

(Sign plainly with full Christian name.)

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 11th day of June, 1901, at my office at Leesville, in Vernon Ph., Louisiana.

(See note on fourth page.)

JAMES M. BOYD,

[Seal]

U. S. Com. for W. D. of La.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

#### 45 Homestead Proof—Testimony of Claimant.

I, WALTER O. ALLEN, being called as a witness in his own behalf in support of homestead entry, No. 7682, for S. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer., testified as follows:

Ques. 1. What is your name, age, and postoffice address?

Ans. Walter O. Allen, 33 years, Leesville, Vernon Ph., La.

Ques. 2. Are you a native born citizen of the United States, and if so, in what State or Territory were you born?

Ans. I am. Was born in Canada, was naturalized July 17, 1900.

Ques. 3. Are you the identical person who made homestead entry, No. 7682, at the Natchitoches Land Office on the 10th day of April, 1898, and what is the description of the land now claimed by you?

Ans. I am. S. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said

house and other improvements which you have placed on the land, giving total value thereof.)

Ans. April, 1899, and established actual residence at the same time. One dwelling house, 14x14, chimney, gallery, crib, stables and fruit trees. Valued at \$100.00.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Wife and one child. We have resided continuously.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. I have not been absent at all.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. About two acres raising two crops thereon.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 9. What is the character of the land? Is  
46 it timber, mountainous, prairie, grazing or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable.

Ans. Ordinary pine land, most valuable for farming.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Have you ever made any other homestead entry. (If so, describe the same.)

Ans. I have not.

Ques. 12. Have you sold, conveyed or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. I have not.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same and state where the same is kept.)

Ans. I have not.

**Ques. 14.** Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

**Ans.** I have not made any of any kind since August 30th, 1890.

**WALTER O. ALLEN.**

(Sign plainly with full Christian name.)

\*(In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.)

47 I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before me this 11th day of June, 1901, at my office at Leesville, in Vernon Ph., Louisiana.

(See note below.)

[Seal]

**JAMES M. BOYD,**  
U. S. Com. for W. D. of La.

**Note:** The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

#### Title LXX.—Crimes.—Ch. 4.

**Sec. 5392.** Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court

of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

### Commutation.

Indorsed: Homestead proof. Land office at Natchitoches, La. Original application No. 7682. Final certificate No. 21233. Approved: J. Ernest Breda, register. C. J. Greene, receiver. U. S. Land Office, Natchitoches, La. Received on July 2, 1901, at 12 o'clock—M.

48 Receiver's Duplicate Receipt No. 7682.

Application No. 7682.

### Homestead.

Receiver's Office, Natchitoches, La.

April 10, 1899.

Received of Walter O. Allen the sum of eighteen dollars, no cents; being the amount of fee and compensation of register and receiver for the entry of S. E. 1/4 of Section 8, in Township 2 N., of Range 5 W., La. Mer., under Section 2290, Revised Statutes of the United States.

J. S. DIXON, Receiver.

\$18.00

Excess Receipt No. 20756.

Note.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and cultivation from the date of filing affidavit to the time of payment.



\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for no other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*See note in red ink, which registers and receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

Indorsed: Receiver receipt.

49 Homestead—Act of May 20, 1862.

(Revised Statutes of the United States, Section 2357.)

Excess Receiver's Receipt No. 20756.

Receiver's Office, Natchitoches, La.

April 10, 1899.

Received of Walter O. Allen the sum of three dollars, fifteen cents, being in full for one acres and twenty-five hundredths of S. E. 1/4, Section No. 8, in Township No. 2 N., of Range No. 5 W., La. Mer., being excess in said tract over the area entered under the Homestead Act, per application and receipt No.

J. S. DIXON, Receiver.

\$3.15.

Indorsed: No. — Excess Receipt. Land office at Natchitoches, La. Homestead application No. —.

50

No. 21233.

Receiver's Office at Natchitoches, La.

July 8th, 1901.

Received from Walter O. Allen, of Leesville, P. O., of Vernon Parish, Louisiana, the sum of four hundred dollars and no cents; being in full for the southeast quarter of Section No. Eight, in Township No. Two North, of Range No. Five W., La. Mer., containing one hundred and sixty-one acres and 25 hundredths, at \$2.50 per acre.

Double minimum excess ordered to be refunded as to S. 1/2 S. E. 1/4. June 9/02.

C. J. GREENE, Receiver.

\$400.00.

\$1.08 testimony fee received. Number of written words 719. Rate per 100 words 15 cents.

Indorsed: No. 21233. Walter O. Allen. Filed 17th day of July, 1901, and recorded in Vol. No. 1, page 239. Patent recorded, Vernon Parish, W. A. Winfree, Dy. Clerk. Send patent to Fielder B. Chew, Washington, D. C. Filed Mch. 5, 1902.

51

No. 21233.

Receiver's Office at Natchitoches, La.

July 8th, 1901.

Received from Walter O. Allen, of Leesville, P. O., of Vernon Parish, Louisiana, the sum of four hundred dollars and no cents; being in full for the southeast quarter of Section No. Eight, in Township No. Two North, of Range No. Five W., La. Mer., containing one hundred and sixty-one acres and 25 hundredths, at \$2.50 per acre.

C. J. GREENE, Receiver.

\$400.00.

\$1.08 testimony fee received. Number of written words 719. Rate per 100 words, 15 cents.

Double minimum excess ordered to be refunded as to S. 1/2 S. E. 1/4. June 9/02.

52

No. 21233.

Land Office at Natchitoches, La.

July 8th, 1901.

It is hereby certified that, in pursuance of law, Walter O. Allen, residing at Leesville, La., in Vernon County, State of Louisiana, on this day purchased of the register of this office the southeast quarter of Section No. Eight, in Township No. 2 North, of Range No. 5 West, of the La. principal Meridian, Louisiana, containing 161.25 acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred and three dollars and fifteen cents, for which the said Walter O. Allen has made payment in full as required by law.

Now, therefore, be it known, that, on presentation of this certificate to the Commissioner of the General Land Office, the said Walter O. Allen shall be entitled to receive a patent for the lot above described.

J. ERNEST BREDÁ, Register.

Indorsed: No. 21233. Div. C, List No. 24. Cash entry. Land office at Natchitoches, La. Sec. 8, Town 2, Range 5. Commuted H. E. No. 7682. Meh. 20/02 to R. & R. Certificate suspended Rule 8. Meh. 20/02 to Atty. Send patent to Fielder B. Chew. Patent sent July 14, 1902. F. B. Chew. Dec. 30/01. Appearance of Fielder B. Chew. Approved June 12, 1902, by O. N. Burge, Clerk, Division "C" Ex. Patented July 5th, 1902. Recorded Vol. 127, page 351. Double minimum excess ordered to be refunded as to S. 1/2 S. E. 1/4. June 9/02. Filed 2/27/09. Case No. 383, Exhibit "B." J. F. Slattery, M. in Chancery.

53

State of Louisiana,  
Parish of Natchitoches.

F. M. INGALLS, a citizen of the United States, being first duly sworn, upon his oath, deposeth and saith as follows:

I am personally located with the location of the S. E. 1/4 of Sec. 8, T. 2 N., R. 5 W., La. Mer., the same being the homestead of Walter O. Allen. I have been over the land, but am not able to describe his improvements. I am well acquainted with the entryman. He lives in Leesville. He runs a dairy there at that place. During ten months of the time he held

the land as a homestead, he lived within about six miles of the homestead, but he never resided on the land. He is a man with a family who have never resided on the land. He sold his land to the Wright-Blodgett Co., and was bought by an agent of the Co., who lives at Lake Charles. I saw the check that paid for the land as it was in the same check that paid for J. J. Hicks' homestead that was proved up and sold at the same time. That Co. also furnished money to commute the entry.

F. M. INGALLS.

Subscribed and sworn to before me this the 18th day of Dec., 1902.

.....  
Special Agent, G. L. O.

54 Special Agents must retain a press copy of this report.

#### Report of Fraudulent Claim or Entry.

This form must be used only in cases found or believed to be fraudulent or abandoned. Cases found to be lawfully made and maintained need not be reported on this form, but must be reported by letter containing brief statement of the facts.

In cases of homestead claims the blanks must be filled up strictly as here indicated. In other cases the form will be followed as closely as applicable, and in all cases reported such other points will be covered as the nature of the case may require.

In every instance when names of parties or witnesses are given, the postoffice address and residence must also be stated.

1. Name of claimant:

Walter O. Allen.

2. Description of land covered by filing or entry:

S. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W., La. Mer.

3. Date of examination:

May 23rd, 1906.

4. Character of land. (Timber, mineral, agricultural, or desert.) If timber land, whether, if cleared, it would be unfit

for agricultural; if for timber-culture entry, whether section is naturally void of timber; if desert, whether grass or other agricultural crop could be produced without artificial irrigation; if mineral, character and evidence thereof:

Pine timbered land, which, if cleared, would be adapted to agriculture.

5. Date and number of filing or entry; if proof has been made, date of proof, and number of final certificate:

H. E. No. 7682. April 10, 1899, C. E. No. 21233, July 8, 1901. Pat. issued July 5, 1902.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant, and nature of claim:

The land is unoccupied, but is claimed by the Wright-Blodgett Company, Limited, of Saginaw City, Mich., by virtue of a warranty deed from entryman.

7. Is the land inclosed for stock ranging or other purposes, and if so, by whom? Give extent of such inclosure, and describe the land inclosed:

The land is not inclosed.

8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold:

The timber has not yet been cut or removed.

55 9. Character, extent, and value of improvements in detail, when and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were constructed, and cost of same. If a timber-culture entry, amount and date of breaking, planting, etc.:

There are no improvements of any character on the tract, but evidences of a double house with a passage bet. the two houses, built across the line bet. this claim and the adjoining homestead, which was entered by J. J. Hicks, his brother-in-law.

10. Residence of claimant: When actually established on

the land, and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land, or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to make the entry, and is known in the neighborhood of the claim:

Claimant lives at Winnfield, La. He never resided on his homestead. Sometime in the year 1899 he removed with his family, wife and children, from Leesville to the home of his mother-in-law (Mrs. Hicks), which is about four or five miles distant from his homestead and lived there.

11. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant; Whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferee, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record; whether the entry has been abandoned or relinquished, and if so, when and for whose benefit:

There is no evidence that the entry was made at the instance or in the interest of any other party, but it was made for speculative purposes. The records of Vernon Parish, La., contain the record of a warranty deed conveying the tract in question from the entryman to the Wright-Blodgett Co., Limited, of Saginaw City, Mich., dated July 10, 1901. The consideration mention [mentioned] in the deed is \$800, and said deed is recorded in Book "S," p. 546.

12. Names and postoffice address of witnesses; their reliability; abstract of their testimony:

Samuel Ownes, John Brasley, Richard Monk and J. J. Newman, Hicks, P. O., and Geo. W. Ingalls, Still, La., are reliable. They live and have lived for many years in the vicinity of the entry....and say.

13. Have you secured affidavits of witnesses? If so, submit them or copies thereof:

(See affidavit of F. M. Ingalls, which I think was made before former agent Irwin. J. W. W.

14. Have you requested claimant to make a statement? If so, and he does not intend to offer proof, did you try to obtain

a relinquishment or an affidavit to that effect (without coercion)?

No.

15. Was the fraud willful?

56

Yes.

16. Have any legal proceedings been instituted?

No.

17. Action recommended by agent:

That a suit be instituted to set aside and annul the patent.

Dated at New Orleans, La., Aug. 23, 1906.

CLAYTON G. COLEMAN,

Special Agent, General Land Office.

Note: If the space allotted under any of the above headings is not sufficient to state the particulars required, state the same on a separate sheet referring to the number of the question, and attach the same to the report.

Indorsed: U. S. General Land Office. Received Aug. 29, 1906. 139636. Report of Clayton G. Coleman, Special Agent, G. L. O. New Orleans, La., Aug. 23rd, 1906. In the case of homestead entry No. 7682. L. O. Natchitoches, La. Name, Walter O. Allen. Tract, S. E. 1/4, Sec. 8, Tp. 2 N., R. 5 W. No. of report, ——. Recommendation: Suit to annul patent. Date of office letter directing the investigation, 190. August 27, 1906. Respectfully forwarded. Approved: S. W. Williams, Chief Field Div.

57 9. There is also evidence of an inclosure embracing about 2 1/2 acres, which is partly on the claim in question and partly on the adjoining homestead of J. J. Hicks, his brother-in-law. About 1 1/2 acres within this inclosure seem to have been broken several years ago. There are about a hundred pine trees standing within the land that was inclosed, but not one was deadened even on the land that appears to have been broken. The house and fence were burned by a forest fire a year or two ago. The final proof was made before James M. Boyd, U. S. Comr., whose reputation in this line was notoriously bad. There is no evidence of a well on

the premises, for which I made diligent search, nor is there any living water on or in the vicinity of the tract in question.

11. The purchase of the claim was negotiated by Nat Wasey, the authorized and accredited agent of the Wright-Blodgett Co., to examine, purchase, acquire and pay for timbered lands in Vernon Parish for them, and he was assisted by James M. Boyd, at that time U. S. Commr., and as such empowered to take final proofs, as sub-agent. The said Boyd is now the fully authorized agent of the said company.- Both of these men knew well that the entryman, Allen, had never complied with the requirements of the homestead law, either as to residence or cultivation.

12. They will testify to the truth of the facts set forth in this report, if called upon by the proper tribunal; but they were unwilling to make affidavits voluntarily for fear of offending the parties.

See affidavits of John Johnson and C. M. Ingalls, Bedie Akin, Case F, 22867; also affidavit of Michael Smith in Elijah Z. Boyd case, F 24222.  
S. W. W.

58

State of Louisiana,  
Vernon Parish, ss.

C. M. INGALLS have been duly sworn, deposes and says that he is a citizen of the United States, sixty years of age, a resident of Vernon Parish, La., and a farmer by occupation; that he is well acquainted with the homestead entry of Bedie Akin in Section 24, T. 3 N., R. 5 W., La. Mer., and has lived within two miles of the said homestead entry for many years; that he was acquainted with Nat Wasey, who was the authorized agent of the Wright-Blodgett Company, Limited, of Saginaw, City Michigan, to purchase timbered lands in this parish; that the said Wasey came to this vicinity with one James M. Boyd, of Cora, La., who was associated with him and assisted him in examining said lands and acquiring title to the same; that about five years ago they came together to this vicinity to examine the said homestead of Bedie Akin; that the said Boyd stayed at affiant's house while here, and the said Wasey stayed at the house of his son, George W. Ingalls; that they saw and



inspected said homestead thoroughly and saw the improvements so-called on the claim and that they knew well that the said Bedie Akin had never resided on the said claim, but lived with her father near Hineston, La., at least ten miles distant; that they knew well that no one had ever lived in the house, which had no window, chimney or floor, and never even had a door hung.

Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

C. M. INGALLS.

Subscribed and sworn to before me in Vernon Parish, La., this 9th day of June, A. D. 1906.

CLAYTON G. COLEMAN,  
Special Agent, G. L. O.

59

State of Louisiana,  
Vernon Parish, ss.

John Johnson, having been duly sworn, deposes and says that he is a citizen of the United States, fifty-one years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he is well acquainted with Nat Wasey, who lived in his community about five years, or from the year 1899 to 1904 inclusive; that the said Wasey was the duly accredited and authorized agent of the Wright-Blodgett Company, Limited, of Saginaw City, Michigan, to purchase timbered lands in Vernon Parish, La., and that he did purchase a large quantity of land in said parish for the said company; that he, affiant, sold to the said Wasey 160 acres of timbered land for the said company, and was paid therefor by the said Wasey; that the deed for the said land was made by him to the said Wright-Blodgett Company; that the said Wasey always examined the lands, whether homesteads or otherwise, before purchasing the same, and knew well the improvements thereon and the status thereof.

JOHN JOHNSON.

Subscribed and sworn to before me in Vernon Parish, La., this 8th day of June, A. D. 1906.

CLAYTON G. COLEMAN,  
Special Agent, G. L. O.

60

State of Louisiana,  
Vernon Parish, ss.

MICHAEL SMITH, having been duly sworn, deposes and says that he is a citizen of the United States, fifty-four years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he was well acquainted with Nat Wasey during the time he was in this community buying and acquiring timbered lands for the Wright-Blodgett Company of Saginaw City, Michigan, during a period of about five years, from about 1899 to 1904; that the said Wasey was the duly accredited and authorized agent of the said company during that time to buy, acquire and pay for timbered lands in Vernon Parish, La., for said company; that he always examined the homesteads which he purchased, for said company, thoroughly before purchasing the same, both as to the timber thereon, the improvements as as to whether the complainants had complied with the requirements of law; that he made such investigation in regard to the homestead claim of Elijah Z. Boyd, which is located in Section 14, T. 2 N., R. 5 W., La. Mer., and knew that the said Boyd had not resided on his said homestead during the life of his claim, but had lived during that time at Cora, La., a distance of some four or five miles from the said homestead.

Affiant makes this affidavit of his own free will and accord, and in the interest of right and justice.

MICHAEL SMITH.

Subscribed and sworn to before me at Leander, La., this 9th day of June, A. D. 1906.

CLAYTON G. COLEMAN,  
Special Agent, G. L. O.

Indorsed: Filed Dec. 4th, 1906. W. Jackson, Clerk.

- 61 Abstract of Title to Wright-Blodgett Company, Limited, from the Notarial and Abstract Office of J. J. Hicks, Leesville, La.

United States

vs.

No. 383

W. O. Allen et al.

Southwest quarter of northeast quarter (excepting 7 acres out of the northwest corner of the said 40) of Section 34, Township 3 North, Range 5 West; south half of southwest quarter of Section 14, Township 2 North, Range 5 West; northeast quarter of Section 8, Township 2 North, Range 5 West; southeast quarter of Section 8, Township 2 North, Range 5 West; east half of southeast quarter of southwest quarter of Section 17, Township 2 South, Range 6 West, in Vernon Parish, Louisiana.

- 62 C. J. Greene, Receiver, Vendor.

John F. Lowe, Vendee.

Instrument, final receipt.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | May    | 25   | 1901  |
| Date of ackn'ment,  | May    | 25   | 1901  |

No. of witnesses, —.

Officer before whom authenticated, C. J. Greene, receiver

|                 | Month.                | Day. | Year. |
|-----------------|-----------------------|------|-------|
| When filed,     | July                  | 17   | 1901  |
| Where recorded, | Book No. 1, page 240. |      |       |
| Consideration,  | \$1.89.               |      |       |

Part of Section.

S. W. 1/4 of N. E. 1/4, Sec. 34, Twp. South 3 N., Range West 5 W. No of acres 37.90.

John F. Lowe, Vendor.

Wright-Blodgett Co., Ltd., Vendee.

Instrument, Wty Deed.

Month. Day. Year.

Date of instrument, June 21 1901

Date of ackn'ment, June 21 1901

No. of witnesses, 2.

Officer before whom authenticated, Jerome H. Jackson,  
N. P.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book S, page 544.

Consideration, \$100.00.

Part of Section.

S. W. of N. E. 1/4, excepting seven acres out of the N. W.  
corner of said forty, Sec. 34, Twp. South 3 N., Range West 5  
W. No. of acres, —.

Witnesses to signature of John F. Lowe:

NAT WASEY.

JAMES M. BOYD.

C. J. Greene Receiver. Vendor.

Elijah Z. Boyd, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, May 24 1901

Date of ackn'ment, May 24 1901

No. of witnesses, —.

Officer before whom authenticated, C. J. Greene, Receiver.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book No. 1, page 239.

Consideration, \$203.13.

Part of Section.

S. 1/2 of S. W. 1/4, Sec. 14, Twp. South 2 N., Range West  
5 W. No of acres, 81.25.

63

Elijah Z. Boyd, Vendor.

Wright-Blodgett Company, Ltd., Vendee.

Instrument, Wty Deed.

Month. Day. Year.

Date of instrument, June 21 1901

Date of ackn'ment, June 21 1901

No. of witnesses, 2.

Officer before whom authenticated, Jerome H. Jackson,  
N. P.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book S, page 248.

Consideration, \$324.00.

Part of Section.

S. 1/2 of S. W. 1/4, Sec. 14, Twp. South 2 N., Range West  
5 W. No. of acres, 81, more or less.

Witnesses to signature of Elijah Z. Boyd:

J. M. BOYD.

NAT WASEY.

C. J. Greene, Receiver, Vendor.

Joe J. Hicks, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, July 6 1901

Date of ackn'ment, July 6 1901

No. of witnesses, —.

Officer before whom authenticated, C. J. Greene, Receiver.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book No. —, page 240.

Consideration, \$400.00.

Part of Section.

N. E. 1/4, Sec. 8, Twp. South 2 N., Range West 5 W. No.  
of acres 161.24.

Joseph J. Hicks, Vendor.

Wright-Blodgett Company, Ltd., Vendee.

Instrument, Wty Deed.

Month. Day. Year.

Date of instrument, July 10 1901

Date of ackn'ment, July 10 1901

No. of witnesses, 2.

Officer before whom authenticated, W. A. Winfree, Dy  
Clerk &c.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book S, page 545.

Consideration, \$800.00.

Part of Section.

N. E. 1/4, Sec. 8, Twp. South 2 N., Range West 5 W. No.  
of acres, 161.24.

Witnesses to signature of Joseph J. Hicks:

B. F. KOONCE.

H. S. SANDERS, JR.

64

C. J. Greene, Receiver, Vendor.

Walter O. Allen, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, July 8 1901

Date of ackn'ment, July 8 1901

No. of witnesses, —.

Officer before whom authenticated, C. J. Greene, Receiver.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book No. 1, page 239.

Consideration, \$400.00.

Part of Section.

S. E. 1/4, Sec. 8, Twp. South 2 N., Range West 5 W. No.  
of acres 161.25.

Walter O. Allen, Vendor.

Wright-Blodgett Company, Ltd., Vendee.

Instrument, Wty Deed.

Month. Day. Year.

Date of instrument, July 10 1901

Date of ackn'ment, July 10 1901

No. of witnesses, 2.

Officer before whom authenticated, W. A. Winfree, Dy Clerk &c.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book S, page 546.

Consideration, \$800.00.

Part of Section.

S. E. 1/4, Sec. 8, Twp. South 2 N., Range West 5 W. No. of acres, 161.25.

Witnesses to signature of Walter O. Allen:

B. F. KOONCE.

H. L. SANDERS, JR.

Charles P. Johnston, Receiver, Vendor.

James M. Weldon, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, Dec. 4 1900

Date of ackn'ment, Dec. 4 1900

No. of witnesses, —.

Officer before whom authenticated, Charles P. Johnston, Receiver.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book No. 1, page 13.

Consideration, \$3.00.

Part of Section.

S. E. 1/4 of S. W. 1/4, together with other lands, Sec. 17,

Twp. South 2 S., Range West 6 W. No. of acres, 40, more or less.

65

James M. Weldon, Vendor.

Wright-Blodgett Company, Ltd., Vendee.

Instrument, Warranty Deed.

Month. Day. Year.

Date of instrument, June 21 1901

Date of ackn'ment, June 21 1901

No. of witnesses, 2.

Month. Day. Year.

When filed, July 17 1901

Officer before whom authenticated, Jerome H. Jackson,  
N. P.

Where recorded, Book S, page 549.

Consideration, \$50.00.

Part of Section.

E. 1/2 of S. E. 1/4 of S. W. 1/4, Sec. 17, Twp. South 2 S.,  
Range West 6 W. No. of acres, 20, more or less.

Witnesses to signature of James M. Weldon:

NAT WASEY.

JAMES M. BOYD.

State of Louisiana,

Parish of Vernon.

Office of Clerk of the 12th Judicial Dist. Court and Ex Officio Recorder in and for parish and state aforesaid. I do hereby certify that I have carefully examined the foregoing abstract of title to Wright-Blodgett Company, Limited; and there are no mortgages, liens nor incumbrances of record against the property above described. I further certify that there are no judgments against nor suits pending either against the property above described or parties mentioned above. I further certify that the property above described is duly recorded in the records of Vernon Parish and properly indexed.

Given under my hand and seal of office at Leesville, La.,  
August 5, 1901.

W. A. WINFREE,

[Seal]

Dy. Clerk &amp; Ex Officio Recorder.



Indorsed: No. 382. United States vs. J. J. Hicks, et al. Abstract of title to Wright-Blodgett Company, Limited, from the notarial and abstract office of J. J. Hicks, Leesville, La. Filed in ev. May 1st, 09. J. F. Slattery, M. in C. Applies also to No. 383, U. S. vs. W. O. Allen et al case.

66 Law Office of  
Pujo & Moss  
First National Bank Building,  
Ryan Street.

Arsene P. Pujo  
Clement D. Moss.

Lake Charles, La., December 23rd, 1901.

We hereby certify that we have carefully examined the foregoing abstract of title to the southwest quarter of northeast quarter (excepting 7 acres out of the northwest corner of the said 40) of Section 34, Township 3 North, Range 5 West; south half of southwest quarter of Section 14, Township 2 North, Range 5 West; northeast quarter of Section 8, Township 2 North, Range 5 West; southeast quarter of Section 8, Township 2 North, Range 5 West; east half of southeast quarter of southwest quarter of Section 17, Township 2 South, Range 6 West, in Vernon Parish, Louisiana, standing of record in the name of the Wright-Blodgett Company, Limited, and it is our opinion that the title thereto is good and valid and that said property is legally vested in said company at this date.

Respectfully submitted,

PUJO & MOSS.

67 In United States Circuit Court, 5th Circuit, Western  
District of Louisiana, at Shreveport.

United States

vs.

No. 383

Walter O. Allen and The Wright-Blodgett Company, Limited.

J. B. Monroe, A. S. Mitchell, Counsel for Defendant.

M. C. Elstner, U. S. Atty, E. P. Mills, Assistant, Counsel for  
Government.

\* \* \* \* \*

69 In U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, at Shreveport.

United States

vs.

Case No. 383

Walter O. Allen and The Wright-Blodgett Company, Ltd.

It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken.

Counsel for complainant offered in evidence certified copy of deed of Walter O. Allen to the Wright-Blodgett Company, Ltd., of date July 10, 1901, and asked that same be filed and marked "Exhibit "A" in Case No. 383.

70 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

### TESTIMONY OF A. G. WINFREE.

Mr. A. G. WINFREE, a witness in behalf of complainant, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Elstner:

1. Did you know Nat Wazey?

I did.

2. State whether or not in connection with the Wright-Blodgett Co., Ltd., he exercised a general supervision over the purchase of lands in their interest?

I do not know of my own knowledge. I can state that I recognized Mr. Wazey as such. It was so understood throughout the community, and I so understood that he represented the Wright-Blodgett Co., Ltd.

3. From what circumstances that came under your personal observation were you led to the conclusion that Nat Wazey represented the Wright-Blodgett Co. in the investigation of lands and in securing their purchase? State your personal observations, conduct of Mr. Wazey, what he did and all you know about it.

Well, at the time Mr. Wazey was buying lands in Vernon Parish I was running a livery stable, and at the time when he would come to Leesville he would stop with me; consequently, we became well acquainted and I knew at the time that he was

71 purchasing lands throughout the parish by various conversations and transactions I had heard of, but still I don't know that I was ever a witness to any transaction he made for these people. It was only current talk throughout the community.

(Counsel for defendant objects to above testimony on the ground that it is mere hearsay.)

4. State whether or not Mr. Wazey informed you of the purchase of any lands that he had made for the Wright-Blodgett Co.?

I can not answer that question. I do not really know of any particular instance. It is too far back to remember.

5. Do you know whether or not from any statement he ever made to you that he represented himself as the agent of Wright-Blodgett Co. in the purchase of lands?

No, sir; I really don't know that he did.

6. Did you ever see him at Leesville acting in the capacity of attesting witness in any of these purchases that appear on record in this case?

I did not. I was not in position to know those facts.

7. Do you know where Mr. Nat Wazey lived?

I am of the opinion that he lived in the southeast portion of the parish.

8. How far from Leesville?

About 25 or 35 miles. I was never at his place and really do not know that he had a place; only I know that he spoke of his family down there.

9. About what is the distance from Leesville to Lake Charles?

About 70 miles.

10. Did Mr. Wazey, or did he not, have any business occupation in the Town of Leesville?

None that I know of.

11. Did he have any mercantile establishment or office in the Town of Leesville?

Not to my knowledge.

12. How often would you see Mr. Nat Wazey in the Town of Leesville?

I can't remember, but he was there frequently. Possibly weekly; I don't know for certain.

13. You did not see him there often enough to suggest that he was engaged in any permanent or daily business in the Town of Leesville?

No, sir. If he had any business connections in the Town of Leesville I was not aware of it and am not aware of it at the present time.

14. You lived in Leesville?

All of my life.

73 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

## TESTIMONY OF A. N. MAYO.

A. N. Mayo, a witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Elstner:

1. Mr. Mayo, did you know Nat Wazey?

I did.

2. Do you know whether he is living or dead?

I heard some year or two ago that he was dead.

3. Has there ever been a succession of Nat Wazey open in the Parish of Calcasieu?

I believe not, for I have a record of all probate matters in my office and I cannot recall now of having seen such probate proceedings.

4. Do you know that several years ago Mr. Nat Wazey left the Parish of Calcasieu and was supposed to have been taken to a sanitorium?

It was current report at Lake Charles.

5. How long had you known Nat Wazey prior to his leaving Lake Charles?

Must have been 10 to 14 years.

6. During the latter part of his residence in Calcasieu Parish what business was he engaged in?

(Counsel for defendant objected to this witness stating anything from hearsay, but confining himself to his own knowledge.)

74 I think I can say it was real estate business. It was about the only thing I knew of his doing.

7. Do you know anything of his connection with the Wright-Blodgett Co. in the purchase of land without reference to any special tract, but in a general way?

It was currently, or generally, stated and I have understood that he would purchase timber from the Wright-Blodgett Co.; make purchases for them of lands.

(For the purpose of emphasis counsel for defendant objects to this testimony on the ground that it was hearsay.)

8. Have you ever had any conversation with Mr. Nat Wazey himself with reference to his engagements, or employments, or connection with the Wright-Blodgett Co.?

No, sir.

9. You kept a record of the lands in Calcasieu Parish, did you not, in your office?

I have abstract of title records. I have them now.

10. Do you know of any investigations made by Mr. Nat Wazey of the records of lands in Calcasieu Parish for the purpose of making purchases for the Wright-Blodgett Co.?

No, sir.

11. Now, Mr. Mayo, you have stated that it was generally understood that Mr. Nat Wazey was acting in the interest of the Wright-Blodgett Co. in the acquisition of timber lands. Now state just what circumstances led you to make that statement.

(Objected to by counsel for defendant for emphasis as being mere hearsay.)

Not being able to recall any transaction in which any purchase of land as made by Mr. Wazey was for the specific account of Wright-Blodgett Co., but only from the general statement that purchasers made from time to time either for their own account or Wright-Blodgett Company, I have no way of linking any particular transaction as being for the Wright-Blodgett Co. I so often prove up deeds, titles to real estate. Mr. Wazey was in and out of my office from time to time, but what transactions might have been for the Wright-Blodgett Co. I cannot say.

12. Do you know where Mr. Nat Wazey lived several years prior to his leaving Lake Charles?

He lived in Lake Charles on our principal street.

13. Was Nat Wazey a married man?

Yes, sir; twice married.

14. Prior to his death, or prior to his leaving Lake Charles, how long had he been a citizen and resident of Lake Charles?

I don't remember the year he moved away from Lake Charles. He came to Lake Charles about 1886, I should say, and left there in the latter part of the 90's, as well as I can recall.

15. After leaving there in the latter part of the '90's did he again return to Lake Charles and make his residence there?

I think not, sir.

16. Do you know where he lived after leaving Lake Charles up to the time of his leaving Calcasieu Parish?

I do not know.

17. Do you know anything of his having a residence in the Parish of Vernon?

Only current report.

18. Did his family leave Lake Charles at the time you state in the latter part of the '90's at the time he himself left there?

I do not know, sir.

#### Cross-Examination.

By Mr. Monroe:

1. You say you know that Nat Wazey left a half-brother living in Miss.?

I don't know but what this half-brother was in Lake Charles at the time Mr. Wazey left there, but he is probably now in Mississippi.

2. What is his name?

A. Frank B. Clingo.

3. Did Nat Wazey have any other brothers or sisters by name of Clingo?

I never heard of them.

76 This testimony is offered as applicable to all of the cases of the U. E. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

## TESTIMONY OF BEN M. FOSTER.

Mr. Ben M. Foster, a witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Mills:

1. Where do you live?

Lake Charles.

2. How long have you lived there?

All my life.

3. What business are you in?

Real estate.

4. How long have you been in that business?

Since 1898.

5. By whom were you employed in 1898?

I was in business with my father from 1898 to 1901.

6. Did you change your employment at that time and go in with someone else?

About the fall of 1901 I went in with Wright-Blodgett Company.

7. Do you remember the exact date?

No; it was in the fall. I don't remember the exact date.

8. At what place were you employed?

At Lake Charles.

9. Did they maintain an office there?

77 They did.

10. In what capacity were you employed by them?

Looking after the office generally and keeping books.

11. What was the extent of your authority; the nature of your work?

I was under Mr. Kelly.

12. When you say "looking after the office generally" you mean attending to the business of the office?

Yes, sir; and making my reports to Mr. Kelly.

13. How large was the office force of the Wright-Blodgett Co. at that time?

Just one.

14. You were the only man in the office?

Yes, sir.



15. Yet you say you were under Mr. Kelly?

He did not stay in the office all the time.

16. About how much time was Mr. Kelly there, roughly speaking?

During the first part of the time I was in the office Mr. Kelly was in for several weeks. He generally stayed several weeks at a time. He came about every three or four months—sometimes oftener.

17. During his absence you had full charge of the office work?

Yes, sir.

18. Did you know Nat Wazey?

Quite well.

19. Was he in the employ of the Wright-Blodgett Co. when you went to work for them?

Yes, sir.

20. In what capacity was he employed?

He was a woodman.

21. What do you mean by a woodman?

(For emphasis the objection of irrelevancy was here made by counsel for defense on ground that the employment of this witness, not having taken place until the fall of 1901, nothing that he knows can be relevant to any act or allegation set forth by the pleadings at issue in these cases.)

78 Well, he was employed to inspect timber for the company and make reports on it.

22. What else did he do?

At that time the company's holdings were scattered. They were trying to "block up."

23. What do you mean by "block up"?

They were consolidating their holdings.

24. They would buy lands in between lands they already owned?

Yes, to make their holdings contiguous.

25. How many men were employed as woodmen?

No one else. That is, regularly.

26. Do you know whether there was any record in the office of this company that showed that the lands upon which Wazey would report had been gone over or cruised at any other time?

When the company bought they had the cruisers report on what they bought.

27. Was there any record showing a prior report to that made by Wazey?

In some cases, yes. I remember in some of the townships where the company bought they had a cruisers' report on nearly everything in the whole township. That was for the general office record, showing where was the good timber land.

28. These reports made by Mr. Wazey were made for what purpose?

The purpose of buying. Wazey would make his report as to how much timber there was on the land, which gave the company a good idea how much to pay for the land.

29. What investigation would be made by the company as to titles of these lands that Mr. Wazey would report on?

Well, in cases where there was any doubt at all or any long chain of title we had abstract made. In other cases where there was a patent or receiver's receipt to go by we simply took that first record.

30. It is a fact that the company would buy upon the report of Mr. Wazey as to the timber?

(Objected to as leading.)

And a fact that where there was a receiver's receipt for the land or the patent they would go by it?

If there was just a receiver's receipt or patent and no other chain of title and if there was timber on the land the company felt justified in buying it.

31. In these cases when Mr. Wazey would report as to the status of the title to the timber on land and as to whether the land was held under a receiver's receipt or patent would any other investigation be made before the company purchased?

No, except that usually—and, I should say, in almost every case—either the receiver's receipt or the patent was sent to the office.

32. But they would send no one to the land to make investigation?

We would send no one from the office if we had a receiver's receipt or patent, any more than we would send anyone to Alexandria or to Lake Charles to investigate as to an abstract.

33. The [then], I understand your testimony to be that the company would buy in cases where there was a patent or receiver's receipt upon the report of Mr. Wazey?

Yes, sir; that is a fact.

34. Without any further investigation?

Yes, sir.

35. Was Mr. Wazey located in Lake Charles, or did he live in the country where he bought timber?

He lived in the woods.

36. Was it part of his business to live in the woods and go around where the land was?

(Objected to as leading.)

He could find out thing at less expense by living in the woods.

37. Where did he spend his time?

80 In the woods.

38. Now, Mr. Foster, from your experience in the office and your examination of the records and familiarity with them and from your conversations with Mr. Kelly and with Mr. Wazey, do you know how long prior to the time you went into the office Mr. Wazey had been employed by the company?

(For emphasis the objection is here made by counsel for defendant that the question calls for secondary and hearsay evidence which is inadmissible and is hereby objected to.)

I don't know just how long. I know it was some years before I went in. Possibly, maybe three, years.

39. Do you know in what capacity he had been employed prior to the time you went into office?

(Same objection here made by counsel for defendant.)

I don't know, but I suppose it was in the same way.

40. For what reason do you suppose it was in the same way?

For the reason that no change was made in the office when I went in, that I know of.

41. Did the records of the office show in any way what his employment had been?

Practically the same.

42. Just the same as afterwards?

Yes, sir. He got his salary just the same as afterwards.

43. In what way would these lands 'bought through Wazey be paid for?

Currency, usually.

44. Who would do the paying?

Most of the time Mr. Wazey; once in awhile Mr. Kelly, and occasionally I went up. Sometimes other people would pay when they bought through some other agent.

#### Direct Examination Continued.

By Mr. Elstner:

45. You know the domicile of the Wright-Blodgett Company?

Saginaw, Wesside, Michigan.

46. Firm or corporation?

81 A partnership association, so the deeds all recite.

47. Do you know the individual members of that partnership association?

I know some of them.

48. Give their names.

I can only state positively as to the officers—Mr. Davis, Mr. Blodgett and Mr. Stork.

(For emphasis the objection is here made by counsel for defendant that the testimony is irrelevant.)

49. Do you know that any of those whose names are mentioned by you came to Lake Charles and in person supervised or conducted the affairs of the partnership?

Mr. Stork came down about one [once] a year usually. He always stayed at the office.

50. Do you know that Mr. Stork at any time went out and made personal investigations of the lands to be acquired by Wright-Blodgett Co.?

I don't believe so. Not to my knowledge.

51. Who exercised general supervisory control over the affairs of the Wright-Blodgett Co. in Louisiana?

Mr. Michael H. Kelly.

52. Do you know about what time Wright-Blodgett Co. began their operations in Louisiana?

In 1898, I believe.

53. What time did Mr. Kelly assume supervision of the affairs in Louisiana?

I do not know. I suppose when the company came into Louisiana. Mr. Kelly had charge when I went in in 1901.

54. You don't know how long prior to 1901 he acted in that capacity?

I don't know, but I suppose from the beginning.

55. How long prior to 1901 had you known Mr. Kelly?

Two years or more.

56. Where?

In Lake Charles.

57. You saw Mr. Kelly frequently prior to 1901?

82 Yes, sir; I saw him often. Our offices were adjoining. That is, there was only a door between his office and that of my father.

58. Were you ever in his office prior to 1901, either socially or otherwise?

Yes, sir.

59. Did you know from your visits to his office and from the observations you there made in what business he was engaged prior to 1901?

Yes, sir. He managed the business of Wright-Blodgett Company.

60. Did you know him as early as 1898.

That is so far back I hardly remember, but I believe that is about the time I first saw him.

61. From that day on from your observations you know he was engaged in connection with the Wright-Blodgett Co.?

Yes, sir.

62. Do you know whether or not Mr. Kelly visited the lands that were subsequently purchased by the Wright-Blodgett Co. prior to their purchase?

I don't know whether he saw all of them, but I suppose Mr. Kelly must have looked over the main purchase before he purchased. (By main purchase meaning original purchase about 1898 of the Fairbanks and Head and other lands.)

63. Do you know of Mr. Kelly's going with Mr. Nat Wazey at any time to any of the lands purchased at the suggestion of Mr. Wazey in order to look over them?

Yes; frequently he went with Mr. Wazey into the woods to verify his estimates and things of that kind.

64. Do you know where Mr. Nat Wazey had a homestead where he lived in the woods?

Yes, sir.

65. Did you ever visit him there?

Yes, sir.

66. Did Mr. Kelly ever go with you there?

83 Yes. I made one or two trips with Mr. Kelly; maybe several.

67. Ever stop at Mr. Wazey's all night?

Several times.

68. Mr. Kelly also?

Yes, sir.

69. Were you ever present at the time that Mr. Wazey paid for any of these lands?

Yes; several times.

70. Now, these deeds, without taking them up separately, specify that there was so much paid in cash as a consideration of the purchaser from the man who held the final receipt—that is, the entryman. At the sales at which you were present did you see the money paid?

(At this point counsel for defendant asks counsel for complainant if, in the question above he was referring to the lands in controversy in the bills now before the Court, and in reply counsel for complainant substitutes the following question for Q. No. 70:)

71. Do you know anything, of your own knowledge, in regard to the sales of the lands by the homesteaders to the Wright-Blodgett Co. by being personally present and witnessing the sales prior to what date?

Late in the fall of 1901. I think in the month of December; might have been November.

72. At no sale prior to 1901 were you present?

No, sir.

#### Direct Examination Continued.

By Mr. Mills:

73. Do you remember the numbers of the lands on which Wazey lived?

Section 28; Township 1 South; Range 5.

74. You are positive as to that?

Yes, sir.

75. When was it that you visited him?

Oh, I don't know how many times.

76. Was Wazey living there with his family?

Yes, sir.

77. He had his household goods?

84 Yes, sir. He made his home there.

78. Do you know how long he lived there? When was the first time you saw him there?

Soon after I went in with the company, within a few months. He had just moved there from Slabtown.

79. How long do you remember that he lived out in the woods?

He was still living there when I left the employ of the company. The place was called Sigler.

80. When did you leave the employ of the company?

The 1st of March, 1904.

81. Did he live at any other place during that time?

No, sir.

#### Cross-Examination.

By Mr. Monroe:

1. These visits which you say you made to Mr. Wazey in company with Mr. Kelly were all made after your employment with the Wright-Blodgett Company in 1901, and the earliest visit you remember of making was some month or two after your employment?

Yes, sir.

2. If I understood you correctly, you stated the company had caused to be made a general cruisers' estimate of the timber in that section of the country?

No, I did not state they caused the cruise to be made, but I believe they had such a cruise from Mr. J. D. Lacy & Co.

3. Who are J. D. Lacy & Co.?

Real estate men with an office in New Orleans.

4. Do they or do they not make a business of making these timber cruises or estimates?

It is their principal business, or was at that time.

5. How do they stand in the business and how are their estimates considered by timber people?

Of the best.

6. You are connected with the timber business to some extent? And have been for some time?

Yes, sir.

7. Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacy & Co. without making any special investigation themselves?

That is the usual case; the usual method of doing business.

8. You say Wright-Blodgett Co. had the estimates of J. D. Lacy & Co. for that part of the country?

Yes, sir. I think it was made before their original purchase and I think they got their figures from Lacy for the original purchase.

9. What acreage was their original purchase?

I have forgotten now.

10. Approximately?

Something more than 100,000 acres.

11. During your incumbence of office under Wright-Blodgett Co. did any law firm examine and pass on titles for them?

Yes, sir; Pugo & Moss of Lake Charles.

12. What was the custom of Wright-Blodgett Co. relative to examination of titles by Pugo & Moss?

They turned all abstracts over to them for their opinion before they were sent to the home office.

13. Did they examine the title before the sale was actually concluded?

Well, in some cases they did and in some cases they did not.

14. Was it the custom of the office to submit the title to Pugo & Moss for examination, have them approve it and then pass the deed and record it and then submit the entire abstract with deed to them and have them write their approval on it?

That was the case during the latter part of the time I was in office, but when there was a patent or a receiver's receipt sometimes we bought and paid for the land before the title was approved.

15. I take it that in all cases where Pugo & Moss gave a written opinion on the back of an abstract that the title had been examined before purchasing and subsequently had been submitted to them for opinion and written approval?

That is a fact.



16. Was J. M. Boyd in the employ of Wright-Blodgett Co. during the years 1901-02, or prior to those years?

He was never in the employ of the company while I was with them and I don't believe before I was with them.

17. The Wright-Blodgett Co. bought considerable land out in that neighborhood, did it not?

Yes; more than 50,000 acres, I suppose.

18. Was it not the custom of Wright-Blodgett Co. to insist upon the delivery to them of a final receipt or patent before paying for land?

Yes, it was always the case.

19. Their instructions to the office were to buy nothing unless they had either a receiver's receipt or a patent?

Well, unless in the case of a complicated title; one that had passed through many hands. Then we would not insist upon receipt or patent. But if the only instrument was a patent or receiver's receipt we always got the one or the other unless it might be where the company bought only a part of a homestead and then, although we got the patent, we returned the patent to the entryman. But in case of receiver's receipt we got it. That was always before the sale was closed.

20. Mr. Foster, you spoke of certain handling of cash in purchases by Mr. Wazey, and in asking some of the questions attorney for complainant used the expression these lands." It is important to find out what lands were being referred to. You would not, for instance, in answering those questions have been referring to any deed which was made prior to the time you went into the employment of the Wright-Blodgett Co. in 1901, would you?

No, sir.

21. The testimony of that subject was relative to some transactions subsequent to that date?

On lands generally during the time I was with the company. Nothing prior thereto.

22. When you went into the employ of the Wright-Blodgett Co. was anyone else purchasing lands and timber for them besides Mr. Wazey?

Yes; Mr. Wingate at Leesville bought some, and Lewis Melder of Glenmora bought some.

23. You stated on your direct examination that you supposed that Mr. Wazey had been buying before you went into the employ of the Wright-Blodgett Co. in 1901. Did that

supposition apply equally to these other gentlemen who were purchasing?

Yes, sir.

### Redirect Examination.

By Mr. Elstner:

1. Did you have in the office of the Wright-Blodgett Co. in Lake Charles a general map showing the pine lands in the several parishes around?

We did.

2. Did that map show the lands owned by individuals and also the lands then belonging to the public domain of the United States?

No, the maps showed the ownerships by private corporations of the principal big holdings throughout the pine belt.

3. Then the Wright-Blodgett Co., or its officers in Lake Charles, had no knowledge of the pine lands in Vernon, Rapides and Calcasieu Parishes except in so far as they were owned by corporations or individuals?

The white places on the map would show that other corporations did not own that particular land.

4. Then you would take it that all the lands not appearing on the map as owned by corporations or individuals were public lands?

No, because we did not mark up the individual  
88 lands. If there was an individual ownership of, say, a quarter section we did not note it on the map.

5. Did the Wright-Blodgett Co. ever keep maps or records of any kind in its office for a knowledge of the lands belonging to the public domain in these parishes?

Yes, from time to time we got such records. Not generally, but in special cases we have seen maps showing the ownership of all of the holdings and that which was not colored was public domain land. In other words, in the company's office, in "blocking up" their lands, we tried to know who owned all of the intermingling lands.

6. As a matter of fact, the value of pine lands depends to some degree on the compact forms in which that land is located, does it not?

Yes, sir; and a big degree, too.

7. Was it not the purpose of the Wright-Blodgett Co.,

knowing this fact, to try and secure as large a tract of land in compact form as practicable?

Yes, sir.

8. Did they not make inquiries, both from maps and from personal investigations, with a view of ascertaining the location and ownership of lands that would facilitate them in carrying out this object?

They did.

9. In doing this would they not necessarily ascertain lands in juxtaposition to their own that were within the public domain?

They did.

10. Did Mr. Kelly and Mr. Wazey, or other representatives of the Wright-Blodgett Co., frequently visit their holdings?

Mr. Wazey was on the ground all the time; Mr. Kelly made periodical trips, and I have been on it several times.

11. With reference to the trips made, what would you call periodical trips?

Every time he would come down, which was every three or four months.

12. When Mr. Kelly was away you were in charge of the office?

Yes, sir.

13. During his absence did you exercise the same kind of supervision over the affairs of the company that Mr. Kelly did in person when present?

No; I referred everything to Mr. Kelly.

14. I do not mean did you exercise the same degree of control over the affairs of the company, but did you frequently visit the holdings of the company in order to ascertain the existing condition during his absence?

I did.

15. You had on the map of the company, and from that map could determine, the localities visited by you when going over the holdings of the company?

For emphasis the objection is here made that this testimony is totally irrelevant for the reason that witness has repeatedly stated he was not employed by the company until 1901 and subsequent thereto, and that all the purchases in these cases by Wright-Blodgett Company were prior to that date.)

16. Whenever you visited these holdings did you have any opportunity of becoming acquainted with the people living in the community?

To a certain extent, yes.

17. Did you have an opportunity of seeing in what kind of business they were engaged?

Most of them were farmers.

18. Did you have any opportunity of observing or judging of their apparent financial condition?

They were just like the ordinary piney-wood folks.

19. Do you know in what amounts, if any, money was sent from Lake Charles to Nat Wazey at Glenmora?

Money was sent there only once or twice, possibly three times, to my knowledge.

20. Do you know in what amounts?

I do not recall; something like \$1,000.00, possibly more.

21. Do you know where the Wright-Blodgett Co. kept, either as a firm or through their agents, their bank account in the City of Lake Chas.?

They had no bank account in Lake Charles.

22. Did Mr. Kelly have a bank account in Lake Charles? He did.

23. At what bank?

90 Calcasieu National Bank.

24. Do you know whether Mr. Kelly kept that money on deposit there or received the money in that bank as his own individual funds or as an agent for the Wright-Blodgett Co.?

I suppose that it was the Wright-Blodgett Co.'s money.

(For emphasis objection is here made that this is merely hearsay.)

25. Why do you suppose it was Wright-Blodgett's money? Because it was used for the company.

26. Can you state whether or not on three or more occasions that out of that fund as much as \$2,000.00 at a time had been sent Nat Wazey for lands acquired?

Yes, but I don't know how many times; several times. And I don't remember the exact amounts. There might have been more money than that sent to him at times. Usually he got enough money to pay for the lands he had written in about. If

several sales had been made he might have gotten as much as \$5,000.00 at one time, but if only one sale it would have been correspondingly less.

27. Do you know of any money being sent to Wazey at any time that was used by him for the payment of the purchase price of lands that were held by the entrymen under final receiver's receipt and was paid to the entrymen by Wazey and the final receipt turned over to Wazey and then subsequently delivered to the representatives of the Wright-Blodgett Co. at Lake Charles?

(By way of emphasis the objection is here made that any answer to this question which does not pertain to land described in the bills in one of the cases now before the Court will be irrelevant and that any answer which may pertain to lands described in one of the bills will be irrelevant as to the other eight, which objection is here made for emphasis.)

Yes, sir.

28. Do you know how often that occurred?

(Same objection made here as to No. 27.)

Every time they bought on final receipt.

29. You have been in the land business and Mr. Kelly has been in the land business for a long time. Are you familiar with the homestead laws of the United States?

91 (Objected to as irrelevant.)

I am.

30. About how far from Lake Charles are the lands held by the Wright-Blodgett Co.?

You mean "were held," do you not? They don't own any now?

31. Yes, sir. About how far from Lake Charles were the lands known as the lands of the Wright-Blodgett Company?

About sixty miles.

32. About how far from a railroad?

About twelve miles, the nearest of them. They had some scattered lands within four or five miles of the Watkins road.

## Re-examination Continued.

By Mr. Mills:

33. Who held the same position occupied by you prior to the time you went to work for the Wright-Blodgett people?

(Objected to for emphasis as hearsay.)

Thomas E. Dickens.

34. How do you know he was employed by them?"

I have seen him there. Our offices were next to each other.

35. For how long a period was he employed by them prior to the time you went to work for them?

A couple of years.

36. Was he the only man in charge of the office or were there other men in the office with him?

He was the only one.

37. Where is he now?

I don't know.

38. Mr. Monroe has called your attention to the fact that a cruise or report had been made on lands in this territory about 1898. In cases where lands were bought upon the recommendation and report of Mr. Wazey what would govern the action of the company, the report of Mr. Wazey or the record of the cruise?

As a general thing there would not be much difference between the reports but if there should be Mr. Wazey was sent back to see if an error had been made.

39. If he stated that no error had been made in the report what action would be taken?

His report would be accepted.

## Recross-Examination.

By Mr. Monroe:

1. About how often (during the course of your employment) in a year would you get on any individual forty belonging to the Wright-Blodgett Co.?

I should say on an average of every three or four months.

2. That was on the holdings belonging to them?

Yes, sir; to the Wright-Blodgett Company.

## 2nd Exam. of MR. BEN M. FOSTER.

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## Direct Examination.

By Mr. Elstner:

1. Mr. Foster, did you at any time deliver money in person to Mr. Nat Wazey for the purpose of purchasing land for Wright-Blodgett Co.?

A. I did.

2. About how many times?

A. Several times. I don't remember how many times.

3. State about what amounts.

A. Usually about \$1,000.00 at a time. I have delivered as high as \$5,000.00 at a time.

4. Within what period?

A. During the time I was with the company in the fall of 1901 to the fall of 1904.

5. Where would you deliver this money to Wazey?

A. Sometimes in Lake Charles. Sometimes in Sigler. Maybe once or twice in Glenmora.

6. You delivered it as a representative of Wright-Blodgett Company?

A. Yes, sir.

## Cross-Examination.

By Mr. Monroe:

1. As I understand, Nat Wazey would go out through the country and get price on various lands, would bring them back and submit them to the Lake Charles office of Wright-Blodgett Co., the Wright-Blodgett Co. would then have the titles passed upon and if the prices were all right and the titles correct would instruct Mr. Wazey to purchase and would give him money to complete the purchase with. Is that correct?

A. That is correct.

2. And in all those cases was the title examined before the act of sale was actually passed?

A. In most cases. There might have been a few cases. If you mean by attorneys, I will say "In most cases"; if you mean by the office, I will say "In all cases."

3. In one or two cases when Wazey broke through that rule he was held personally responsible for the purchases, he having purchased without submitting back to the office first?

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A. Yes, sir; that is a fact.

4. When you were last on the stand you stated that at some time during your holding of office under the Wright-Blodgett Co. that it became customary when Wazey submitted simply a final receipt to authorize the purchase without having the abstract made and submitted to attorneys. Was that the custom when you first went into office?

A. No; when I first went into office it was the custom, and, I believe, instructions, that all titles had to be examined by Pugo & Moss before any deeds were passed.

5. And after you went into office they having always approved final receipts, you fell into the habit of not submitting final receipts to them any more. Is that correct?

A. Yes; final receipts and patents. If titles were based on final receipt or patent, having been approved before then, we did not go into the trouble and expense of having abstract made to show one item. We put the deed on record and then had abstract made showing title in Wright-Blodgett Co. and then turned it over to the attorneys for approval. That was more as a matter of form.

6. At the time you first went into office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pugo & Moss for approval?

A. Yes, sir; all titles.

6. Mr. Moss testified this morning that it was the opinion among local members of the bar at that time that purchasers were justified in buying on a patent or final receipt without further investigation. When you first went into office was any advice of that character given to you by the firm?

A. I don't remember any special advice, but that was my understanding—that either a final receipt or a patent was as good as a title could be.

95 Counsel for complainant in these cases makes no special objection here to the irrelevancy by reason of the witness being called upon to state the efficacy of the correctness or incorrectness of his conclusion at the time as to questions of law, but rests the right of objection to all testimony taken in this case on the special right specified and agreed to by both counsel for complainant and counsel for the defendant in the beginning of the taking of this testimony, thinking it unnecessary to specifically reiterate the safeguards set forth in this first understanding.)



7. Mr. Foster, you have had some experience as a timber estimator?

A. Yes, sir.

8. When a timber estimator goes on land and estimates timber does he pay any particular notice to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact of how the house is located on the land. Also make a note of the fact of how much has been cleared in order to justify any statement that is made as to the timber.

9. Do you make any statement as to the condition of the house?

A. None whatever— I don't.

10. Do you pay any particular attention to the condition of the house?

A. Not to the house; simply as to how much land is cleared.

11. You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

12. That is the custom observed among all timber estimators?

A. Yes.

13. You stated awhile ago that you had given sums of money of from \$2000 to \$5000 to Wazey in cash. Those sums of money were given him to pay for specific purchases which had been submitted to the office, titles approved and he authorized to buy?

A. In all cases.

By Mr. Elstner:

(Counsel for asking if in two or three instances Mr. Nat Wazey made purchases for which the Wright-Blodgett Co. afterwards held him responsible for the reason that they had not been approved beforehand by Wright-Blodgett Co., witness answered that Wazey was charged with these sales.)

1. Was any sum of money withheld from Wazey in order to make him responsible for any errors that might have been made in purchase?

A. Yes, in two or three cases Wazey was charged with land that he had bought without submitting titles and afterwards

we found some discrepancy in the title. That amount remained charged against him (Wazey) until he had titles straightened.

2. Did either of these instances to which you refer apply to purchases made by reason of a final receipt?

A. I don't recollect. I remember that we held, I think, two sales on Wazey's account. But whether on receiver's receipt or something else I don't recall. I think one of them was on account of a defective tax title. But I don't exactly remember.

3. You have stated that you never made any inquiry further than to find the existence either of the patent or the receiver's receipt in cases of that character?

A. No; we always accepted them, except towards the last few months I was in office. That was after the investigation up there by Mr. Ervin, special agent.

4. Then it is not probable that any of the instances to which you refer wherein Mr. Wazey was held responsible for his purchases occurred in cases of either patents or final receipts?

A. I don't recollect the special name that Wazey was charged with.

5. But it was in case of either patent or final receipt?

A. It would have been in either a case of patent or receipt because all titled went back to that.

6. Counsel for defendant asked you if you would, when going upon the lands covered by a final receipt, either as a timber estimator or for the purpose of viewing the lands, you paid any attention to the character and extent of improvements and you answered, no, only to the extent and for the purpose of observing the value of the timber standing on the land at the time.

A. That was the only report we would make. We would notice them generally, but would pay no attention to them. We would consider improvements on timber land as of no value. It was simply timber we were looking for.

7. Are you familiar with the forms used in acquiring title to the public lands of the United States under the homestead laws in making both the five-year proof and the commutation proof?

A. I am; yes, sir.

8. In going upon these lands would you make any investigation for the purpose of ascertaining whether the entrymen

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had complied with the laws so as to entitle them to a final receipt?

A. I never did.

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## TESTIMONY OF H. H. ROCK.

Mr. H. H. Rock, witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Elstner:

1. Where do you reside?

Lake Charles, La.

2. What business are you engaged in?

Banking business.

3. With what bank?

Calcasieu National Bank.

4. Have you with you a statement from your shipping book?

I have the shipping book?

5. I wish you would turn to that book and find any shipments that may have been made to Mr. Nat Wasey from your bank.

The only one I find is on October 7, 1902, a shipment of \$2,000.00 to Glenmora, La., sent by express:

6. At whose instance was that shipment made?

I could not say as to that. I don't remember that far back.

7. Don't your book show?

That book does not show.

8. Have you a book that does show?

Well, unless there was some check given for it it would not. If it was charged to someone's account it would show.

9. Do you know at whose instance that shipment was made?

I could not say positively who ordered the shipment made.

10. Do you know out of what fund it was shipped?

No, I do not know for sure.

11. You have no knowledge out of what funds it was shipped?

No, sir.

12. Was it out of a fund belonging to Nat Wasey personally in the bank?

I don't think so; I could not say positively without looking it up.

13. Is that the only one in that book? Any shipments prior to that time?

I haven't looked clear through the book.

14. I will ask that you take the book and make close examination and find all the shipments that have been made, as shown by that book, from 1898 up to 1903.

The book does not commence until 1902.

15. I will ask why you did not comply with your subpoena duces tecum?

Because that was the first shipping book that we ever used. Our business was so small before that time that we just used our express book as receipt. We did not have a regular shipping book.

16. Did you have any books or records in your bank that corresponded with the book that you produced herein in obedience to the order of the Court?

No, sir.

17. Any records which showed shipments made by the bank prior to the use of this book?

Yes, sir.

18. What do you call them?

Express books.

19. Are they now in possession of your bank?

I don't know just where they are if they are.

20. You don't know whether they are in the possession of your bank or not?

No, sir.

21. Were you in the bank then?

Not prior to 1900.

22. And 1902 is the time you first commenced keeping this book?

Yes, sir.

## TESTIMONY OF C. D. MOSS.

## Direct Examination.

By Mr. Monroe :

1. Mr. Moss, you are an attorney by profession and are a member of the law firm of Pugo & Moss of Lake Charles, La.?

2. Yes, sir.

2. That firm has been practicing law in Lake Charles since some time prior to the year 1898?

Yes, sir; since 1896.

3. Was your firm employed by the Wright-Blodgett Co. in or about the years 1898 and 1899?

Yes, sir. My recollection is that the employment began about 1899.

4. What was the nature of that employment?

Our firm was employed to pass particularly upon abstract of titles upon lands the company was acquiring in the parishes of Calcasieu, Vernon and Rapides, and also to advise representatives of the company at Lake Charles in reference to the purchase of lands.

5. What was the custom adopted by your good selves and the Wright-Blodgett Company relative to these examinations of title?

Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office after the deeds were acquired from the different owners and these deeds were carried on the abstracts so that our opinions would show our opinion of the titles in the Wright-Blodgett Company. In some cases that I recall there would be two written opinions.

## Cross-Examination.

By Mr. Mills :

1. When your connection with the Wright-Blodgett Co. began who was in charge of their office at Lake Charles?

Mr. Michael Kelly.

2. Who made arrangements with you for your employment?

My recollection is that Mr. Kelly did. That is my recollection of the matter. He might have had the arrangements approved by the home office.

3. Do you remember when Mr. Ben M. Foster went to work for the Co.?

Mr. Foster went to work for the company at Lake Charles, but I can not give you exact date. To the best of my recollection it was near 1902. I can not state the date definitely.

4. Prior to his employment who was employed in the office of the Wright-Blodgett Company?

Mr. Kelly was in Lake Charles himself at the beginning. After Mr. Kelly was there for some time and returned North Mr. Thomas Dickens was in the office for some months. I can not give you the exact length of time. After Mr. Dickens my recollection is that Mr. David Livingstone, a young man of Lake Charles, was there several months.

5. Where is Mr. Livingstone?

At Lake Charles. And then I think Mr. Foster followed Mr. Livingstone. With reference to the time these parties were in the office I am testifying from recollection. Mr. Kelly and Mr. Stork would know better than I.

6. Who would bring these abstracts and deeds to your office for examination?

When Mr. Kelly was there he would bring them. In his absence Mr. Dickens would bring them, or Mr. Foster, or Mr. Livingstone, as the case might be. If Mr. Kelly was in the office he usually brought them in.

7. How much time was Mr. Kelly there?

When Mr. Kelly was first in Lake Charles, about  
102 1899 or 1900, he was there for twelve months or  
more (I can not give the length of time definitely)  
for one or two years.

8. Constantly?

He would return to his home in the summer time.

9. Did you have any dealings with any other employe of the company besides those you have mentioned?

No direct dealings that I can recall. The parties I have mentioned were the parties in the local office at Lake Charles. The local office was in the same building in Lake Charles as our law office—the First National Bank Building.

10. Do you know whether or not from 1898 to 1902 a man by the name of Nat Wazey was employed by the company?

A. Nat Wazey did some work for the company out in the field.

11. Do you know whether he was regularly employed or was employed spasmodically?

I could not answer that question because I really don't know. Mr. Wasey was at that time living in the northern part of Calcasieu or about the edge of Vernon Parish and I did not see him in Lake Charles more than twice a year. He was out in the country.

12. In looking over these papers, abstracts, deeds, etc., did you ever have any occasion to look over or notice any reports from Nat Wazey regarding any transaction?

No, sir. No report from Wazey would ever come to our office; at least, I recall none.

13. Mr. Moss, how is it that you know then that Nat Wazey was employed to do field work as far back as 1898 by the Wright-Blodgett Co.?

I don't know, Mr. Mills, that it extended that far back.

14. How far back do you know it extended?

I can not tell you with any certainty.

15. How long prior to the employment of Ben M. Foster do you know Nat Wazey was connected with the company?

I can not answer that question either. It has been  
103 about five or six years ago, and my recollection is that

Mr. Wazey was doing some work while Mr. Foster was in the local office, but as to how far beyond that time or prior I could not fix that.

16. Do you know that he was employed by the company sometime prior to the time Mr. Foster took up his work?

No, sir; not with certainty enough to answer. Mr. Foster had been at work for the Orange Land Company down there, and I think that Mr. Kelly employed him and he changed right over to the other office, but I can not fix the exact time.

17. Do you know whether Wazey was employed by the Wright-Blodgett Co. prior to 1902?

I can not swear that he was.

18. Do you know?

It is likely that it was prior to that time but I can not say positively without referring to documents or something that might show such employment. I can not from recollection. It is six years back and I can remember about the dates.

19. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett people?

I think all but the first transaction. My recollection is that when the company first organized that it embraced a very large tract of land from parties in Chicago—the Fairbank people—and according to the best of my recollection that purchase was made before Pugo & Moss ever saw the abstracts of title.

20. In cases where the Wright-Blodgett Co. would purchase direct from entrymen or government land would you be called upon to pass upon such title where there were no transfers—nor intervening transactions?

That is my recollection; that the abstract would be brought in; either before or after issuance of patent the abstract would always be brought in showing the issuance of the patent or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, written opinion would be given, and then, after the deed was

104 acquired in the name of Wright-Blodgett Co., either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards Mr. Kelly explained to us that he wanted opinion from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner so that in event of sale of land subsequently these written opinions could be used.

21. Did you make up a new opinion in each instance when receiver's receipt and patent were submitted to you?

Yes, sir; that is my recollection.

22. You are not positive about it?

It might have been that in a very few cases the deed was taken before the abstract was brought in, but my recollection is that the rule was otherwise.

23. What did the abstract show in a case where there had been no transfer and the Wright-Blodgett Company was purchasing direct from entrymen after the issuance of receiver's receipt?

In such case, if it was before the issuance of patent and after the issuance of final receipt, it would simply show issuance and record of the final receipt. In other words, we did not have the affidavit of the entryman before transfer.

24. In these cases of purchases after the final receipt but before patent, did the abstract submitted to you show any re-



port as to whether the lands had been examined to ascertain whether or not the homestead law had been complied with?

No; we would have the ~~naked~~ abstract showing just the issuance and record of final receipt.

25. During the years of your employment by the Wright-Blodgett Co. you talked frequently about land matters and titles with Mr. Kelly, did you not?

Yes, sir; but only with reference to the validity of the titles as was shown by the abstracts and in a general way about them. The idea I want to convey is that Mr. Kelly did not talk his private business with me.

26. In his talks with you in regard to the validity  
105 of titles did he display a thorough knowledge of the homestead law of the U. S.?

I can not testify as to what knowledge Mr. Kelly had at that time of the homestead laws of the U. S.; that is, as to what is required in the matter of proof and residence, etc., by the homestead entrymen I can not say what knowledge he had of those matters.

27. Now, Mr. Moss, you are a lawyer and an intelligent man, and you know you have talked many times with Mr. Kelly in regard to these land matters. Now, I don't presume that you can look into Mr. Kelly's mind and state the exact extent or condition of his knowledge, but you can state whether or not from your conversations with him he showed a general thorough knowledge and understanding of the government land laws in regard to homesteads. I ask you to state that. I can say that Mr. Kelly when he came to Calcasieu parish about 1899 had a general knowledge of the homestead laws, because I do not recall that we ever discussed them with Mr. Kelly at that time, but we did, in later years, when the government inspectors were sent into Calcasieu, Vernon and other parishes, and it was reported that there had been some fraudulent entries, caution Mr. Kelly particularly about the acquisition of lands on the issuance of final receipts unless the entrymen were complying with the laws, and insisted upon his finding out whether such entrymen were complying with the laws as to cultivation, residence, etc. In other words, Mr. Kelly was a stranger to our firm (Pugo & Moss) when he first came to Louisiana in 1899 and we did not know what experience he had had in land matters prior to his coming to Louisiana.

28. Mr. Moss, I don't consider that you have answered the question. I again ask you, from your experience and dealings with Mr. Kelly between the time when you first met him and he was a stranger to you in 1899 and the time when the inspectors were going about the country in 1902, what impression he created upon you as to his knowledge of land matters and government land laws?

106 I will have to say in answer to this, Mr. Kelly did not display any great knowledge of land matters and land laws because he would not make a purchase without coming to the office with his abstract and asking our opinion as to the title, and at that time Mr. Kelly was known to us as an expert timber estimator rather than a man who knew the land laws.

29. Did you ever discuss with him these questions of title?

I don't recall that we ever had any discussions with Mr. Kelly about the acquisition of titles further than to report directly on the abstract until it was rumored that the government was making investigations in that territory.

30. Did you advise the Wright-Blodgett Co. that before transferring any land that they had purchased upon a simple receiver's receipt that it would be advisable for them to make an investigation before they sold the land to any one else?

No, sir; I don't recall that we ever gave any such advise to him or ever thought it was necessary, because up to the time of these rumored investigations we did not know of a single case that had come up in our courts in Southwest Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making, themselves, any special investigation of it.

31. After you had learned of these investigations and had become convinced that a purchase upon a simple receiver's receipt was not a safe purchase, did you advise the Wright-Blodgett Co., or did they advise with you as to whether or not it would be proper for them to have investigated lands that they had already purchased upon a simple receiver's receipt as to whether or not the homestead laws had been complied with?

No, sir; we did not go into the question of any past transactions, but talked with them about future transactions, to be careful and see that the law was complied with.

32. Now as to future transactions—did you advise them or did they advise with you as to whether or not it would be

safe or proper for them to sell to third persons lands acquired by them upon a simple receiver's receipt without making investigations about the compliance with the law?

No, I don't recall that that question ever came up  
107 or was discussed in the office.

33. Can you remember the exact date, or the approximate date when the Wright-Blodgett Company became aware of these investigations?

No, sir; I can not fix the date definitely.

24. About when?

I can only approximate the time, and I can not get it definitely within a period of over three years, about 1902-1903-1904. I don't remember exactly when the investigations were begun, and we did not find out about them until some time after that, because the government people worked quietly and secretly. I should say along about 1902, '03 or '04.

35. When you called the attention of Mr. Kelly, or any other representative of the Wright-Blodgett Company to the importance of having investigations made when they were about to purchase lands under a receiver's receipt and before the issuance of patent, was anything at all said about purchases made under those circumstances prior to the hearing of these rumors of inspection?

No, sir; I don't think that past transactions were ever referred to.

36. Now, Mr. Moss, you know that many such purchases had been made prior to that time?

Yes, sir; I know quite a number.

37. You are absolutely sure that when you told these people that there was a question as to the validity of title thus acquired unless the law had been complied with that they asked you absolutely nothing at all about purchases that had already been made under those circumstances?

That is my recollection.

38. Mr. Moss, you do not know as a fact that in cases of purchases upon a simple patent or simple receiver's receipt that you were always consulted under those circumstances.

I can not swear that I was consulted in every case.

39. You have never examined the records of all  
108 lands acquired under any circumstances by the Wright-Blodgett Co., and then checked that up

against opinions rendered by your office to ascertain whether or not your office had rendered opinions in cases of all lands.

No, sir.

40. Then, for all you may know or recollect, they may have made a number of purchases upon receiver's receipt or patent where there had been no intervening transfers without consulting you?

Such a thing is possible, but our understanding is that every transaction passed through your office except the original purchase made, as I recall, from the Fairbanks, which was a very large purchase made by Wright-Blodgett Company, and I think that abstract reached the office at some subsequent date and was examined.

#### Re-examination.

By Mr. Monroe:

1. Mr. Moss, on your cross-examination informally in the course of explanation given to the assistant District Attorney you explained the attitude of the Calcasieu bar prior to the coming of the government inspectors into Calcasieu parish on the subject of titles based on final receipt from the government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the government inspectors?

Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt which showed that he had made his final payment that it was absolutely safe to approve the title. There had been no suits in our courts that I can recall where any charges of fraud was ever made relating to any entries and the lawyers, while they might have been mistaken, thought a final receipt to be equivalent to a patent.

2. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

109      1. The first time that the matter was called to our attention was when the investigation was started by the government to which I have referred, and I can not give the exact year.

3. In the course of the cross-examination counsel for complainant seemed to think it strange that after your attention

was called to this possibility of trouble no reference was made in your conversations with Mr. Kelly to titles acquired prior to that time. How do you account for the fact that no reference was made to prior acquired titles?

The only way to account for that is that at the time of these investigations the discussion came up as to future care in the acquisition of title where final receipt only had issued; that for the past transactions the patents had at that time been obtained if not in every case, in almost every case. The patent had been obtained and issued to the original entryman who had issued final final receipt, and not having had any litigation at the instance of the government or otherwise attacking such transactions it was naturally thought that after the issuance of the patent it was all a closed book. It was the lawyer's opinion in such cases.

#### Re-cross Examination.

By Mr. Mills:

1. The answer that you have just made, that you account for your failure to advise them as to past transactions because you think patents had issued—is that answer based on knowledge or simply opinion or thought on your part?

That was the only way I could account for it; as to the past transactions we were not asked about them.

2. Did you make any investigation as to whether patent had issued in past transactions?

No, we did not make any investigation of our own.

3. Then, if you are asked as to whether or not in cases of purchase upon simple receiver's receipt prior to this investigation patents had issued at the time that you heard of these investigations you would have to answer "I don't know"? Is that correct?

Yes, sir; I would so have to answer. Although  
110 when patents came in they would be reported to us.

I would say "I don't know" as to each case; I could not say positively.

4. Then, I understand from your answers, Mr. Moss, that it was the custom of your firm, which was employed by the Wright-Blodgett Company to pass upon the matters of titles, to base your opinion upon the attitude of the bar, and to whether or not any suits had been brought or any investigation

made by the government rather than by the investigation of the law. Is that correct?

No, not exactly. We thought that when an entryman held his final receipt that he was entitled to the patent. That was our opinion at that time.

5. That was a mere independent matter of opinion, clean from the general attitude of the bar, or was it based on a through investigation of the law by you?

It was based upon reading of the law, but not a close study into the homestead law and the requirements in different jurisdictions in such matters. We had approved in the past a great many titles on issuance of final receipt and all had stood, and so we based our knowledge on our past experience and our general knowledge of the law, and we thought we could approve the law on issuance of final receipt.

111                      Testimony of Mr. C. D. MOSS, witness in behalf  
defendant, in the Walter O. Allen Case—No. 383.

#### Direct Examination.

By Mr. Monroe:

1. Mr. Moss, I hand you herewith an abstract to which is annexed a document purporting to be an opinion of Pugo & Moss, which abstract and opinion is marked "W-B Co. 1," and ask that you examine same and state whether that abstract includes an abstract of the southeast quarter of Section 8, Township 2 North, Range 5 West?

Yes, sir.

2. Will you examine the opinion purporting to be by Pugo & Moss and state whether it is the original opinion of those gentlemen?

Yes, sir; written by myself.

3. As far as you know was the usual custom of the Wright-Blodgett Co. of submitting titles to you for your opinion and the resubmitting them after the property was conveyed followed in this instance?

Yes, sir.

4. How many titles did you examine approximately for the Wright-Blodgett Co.?

Too many for me to estimate.

(In connection with testimony of witness counsel for defendant offers abstract and opinion marked "W-B Co. 1" subject to right to withdraw abstract and opinion for use in the Boyd and Hicks cases.)

(The admission of this abstract and opinion is objected to by the government on the grounds that it is part of the books and records of the company and is not admissible in evidence in its own behalf.)

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## Cross-Examination.

By Mr. Mills:

1. You have stated in this instance that the title was examined before the property was purchased and the deed passed. Do you know whether that is true or not?

A. I said that according to my recollection the same mode of procedure was followed as in others. I could not say positively whether I had separate abstract on this entry.

2. Is it not a fact that you do not know whether that abstract was made before or after the land was purchased by Wright-Blodgett Co. and the deed passed?

A. I could not swear positively on that point. I can only say that it is my belief that the same mode of procedure was followed in this case as in others because I know of no objections to the rules.

3. Mr. Moss, you say you know of no objections? Is it not a fact that you stated in your general testimony, which by agreement is to be admitted in each case, that you did know of cases in which purchases were made upon receiver's receipt before the matter was submitted for your opinion?

My statement was that there might have been a few cases of that kind.

- 113 J. J. HICKS, witness in behalf of complainant,  
being duly sworn, testified as follows:

(The following testimony is to be used on the question of good or bad faith in all the cases in which Wright-Blodgett Company is defendant—this being dictated by counsel for government but being strenuously objected to by counsel for defendant.)

### Direct Examination.

By Mr. Mills:

1. Mr. Hicks, where do you live?
- A. At Leesville, in Vernon Parish.
2. How long have you lived there?
- A. I moved to Leesville the 3rd day of July, 1899.
3. Did you make a homestead of any lands in Vernon Parish?
- A. Yes, sir.
4. How many?
- A. One.
5. When did you make that entry?
- A. I don't know exactly.
6. Do you remember about when?
- A. I think in 1899. It was in the fall after I moved to Leesville in the summer, I think.
7. Do you remember the description of the land you homesteaded and the numbers?
- A. No, I do not. I believe it was of Section 8, either the southeast or northeast quarter.
8. Section 8? And what township?
- A. 2 North, Range 5, I think.
9. How did you come to make this entry, Mr. Hicks?
- A. I did it of my own volition, for a homestead.
10. When did you first learn that this land was vacant?
- A. Only a short time before I made the entry.
11. Through whom did you learn that this land was vacant?
- A. Through J. M. Boyd.
- 114 12. Where was Mr. Boyd living at that time?
- A. In Vernon Parish, about Cora Postoffice.
13. Do you know what was his occupation?
- A. U. S. Commissioner.



14. Do you know whether he did any other work at that time, or not?

A. No, sir; I do not know.

15. You learned through Mr. Boyd that this land, Sec. 8, T. 2, R. 5, was vacant?

A. Yes, sir. I asked him to look up a vacant homestead.

16. Did you make the entry at the land office?

A. Before the Clerk of Court at Leesville.

17. What steps did you make to perfect that entry?

A. After making the entry within a short time I hired the improvements put on it—had houses built, rails split and about two acres of land cleared.

18. Who did you hire to do this?

A. I hired Mr. Lawrence. I don't remember but that Mr. Bass assisted him.

19. When did you move upon this land to take up your residence?

A. My first visit to the land after the houses were completed must have been sixty days, maybe ninety days, I don't remember, but it was only a short length of time.

20. Did you maintain a residence anywhere else?

A. My home was in Leesville.

21. Were you a married man?

A. Yes, sir.

22. Had a family?

A. Yes, sir.

23. Where did your family live?

A. Leesville.

24. Where was your actual residence during the time of this homestead?

A. Leesville.

25. How often, if at all, did you go upon this  
115 homestead?

A. Once about every four months to the best of my recollection.

26. You would visit the land once every four months.

A. Yes, sir.

27. Would you stay any length of time?

A. Spent the night.

28. That was the extent of your residence on this land?

A. Yes, sir.

29. How was this house furnished that you had on the land?

A. I don't remember so long; not much; a chair or two, and a bedstead.

30. Any cooking stove?

A. No, sir. What cooking we did was in a fireplace—old style.

31. What crop did you raise on this land?

A. I raised one crop.

32. Did you raise it yourself or hire it raised?

A. Hired it done. Raised corn and some peas with the corn; also had some fruit trees, probably half a dozen or more.

33. Was the crop ever cultivated?

A. I don't know about that. Mr. Allen, my brother-in-law, who had a homestead adjoining this, looked after that part of it.

34. Do you know of your own knowledge whether this crop was ever harvested?

A. I do not.

35. How many seasons was this land cultivated?

A. One.

36. Did you ever prove this entry in any way? Ever take out any final papers?

A. Yes, sir; commutation homestead proof.

37. In making the commutation homestead proof do you remember the time you made it? The date?

A. In 1901, I believe.

38. You are not positive about the date?

116 A. No, sir.

39. In making this commutation of your entry was it necessary to pay any sums of money to the government?

A. Yes, sir.

40. How much?

A. Right around \$400.00 for each entry.

41. Where did you get the money?

(For emphasis the objection is here made that this testimony is irrelevant as it does not tend to prove or disprove any fact or allegation set forth by the pleadings at issue in this case.)

A. Mr. Dickens, who was in the employ at that time of the Wright-Blodgett Co., visited Leesville frequently and a

short time before the fourteen months' period had expired he asked me something about the homestead, and I told him "Yes, I have a homestead," and he asked me then

(Objection here made by defendant on account of hearsay.)

(Counsel for complainant asserts that by testimony heretofore given in this case it has been shown that Thos. B. Dickens was the agent and employe of the Wright-Blodgett Co., and that, therefore, this statement is directly applicable to the issues involved in these suits.)

what I was going to do with the land. I told him I guess I would sell it after I made my proof. The question then came up as to the commutation money, and Mr. Dickens remarked "I will loan you the money." I told him "all right" and after I had received my final receipt Mr. Dickens came to Leesville and made me an offer on the land, which I accepted.

42. In compliance with his promise of Mr. Dickens, did he ever loan you or advance you any money?

(Objected to on grounds of irrelevancy.)

A. Yes, sir.

43. State the circumstances, amounts, etc.

117 A. Well, three or four days, as well as I remember, before the day for making the proof, I wrote Mr. Dickens that I would need about \$200.00. He sent me check for that amount. Upon forwarding the proof together with that amount of money to the land office at Natchitoches I was advised by the officials that the land was situated out of the \$1.25 limit, and that I would be required to pay \$2.50 per acre, and to the best of my recollection I mailed Mr. Dickens the letter that I had received from the land office and he mailed me check to cover the balance.

44. Where did you address Mr. Dickens?

(For the purpose of emphasis the objection of irrelevancy is again urged against this testimony with the suggestion that the bills in this case set up for grounds of attack upon the patent merely failure to live upon the lands, and make improvements, and that the alleged statements of Mr. Hicks, and Mr. Dickens,

pertain to questions not raised by the pleadings and are hence irrelevant.)

(Counsel for complainant asserts the materiality of this testimony upon the issue joined by the bill and answer as to the good and faith on the part of the Wright-Blodgett Company, and is offered for the purpose of showing guilty knowledge upon the part of Wright-Blodgett Company at the time of and prior to the purchase of these lands through its agent, Dickens, and through its agents, Kelly and Wazey.)

A. Lake Charles.

45. Do you know for whom Mr. Dickens worked at that time?

(Objected to unless witness knows of his own knowledge.)

A. I know from hearsay.

46. From his own statement?

118 A. I only know by this: I was Clerk of Court and Mr. Dickens visited my office frequently, looking after matters pertaining to deeds conveying lands to Wright-Blodgett Company.

47. Did Mr. Dickens state to you whether or not he was furnishing you this money for commutation of land personally or for some one else?

A. I do not know.

48. After the commutation of this land did you receive any final receipt or receiver's receipt?

A. Yes, sir.

49. Did you ever make a sale of this land?

A. Yes, sir.

50. To whom?

A. Wright-Blodgett Co.

51. Examine this and see if it, to the best of your knowledge and belief, a correct copy of the act of transfer?

A. I could not say. I believe it was on a printed form.

52. Is this a correct copy?

A. Yes, sir; I am sure—in fact, I know—it is the deed of 1901.

53. You sold the land to Wright-Blodgett Company?

A. Yes, sir.

54. Who represented Wright-Blodgett Co. in the making of this sale?

A. Mr. Dickens.

55. This deed recites that it is made for a consideration of \$800.00. Was that amount paid you for the land?

A. Yes, sir.

56. Was it paid in cash?

A. Yes, sir.

57. State whether or not it is a fact that upon the making of this sale you were paid \$800.00 in cash, or \$800.00 less the amount already advanced you for commutation?

A. I was paid the amount less the checks sent me before.

58. Then the money advanced you by Dickens for commutation of this land was applied when the land was sold Wright-Blodgett Co. as part of the purchase price?

A. I believe it was.

119 59. Don't you know?

A. Yes, I know it was by their deduction.

60. Did Mr. Dickens at any time before the commutation or after or before the sale or after make any inquiries of you as to what extent you had complied with homestead laws regarding this land?

A. No, sir.

61. How often did Mr. Dickens come to Leesville?

A. He was there quite frequently. I don't remember. Sometimes sixty or ninety days; at other times once a month.

62. You were living openly with your family at Leesville?

A. Yes, sir.

63. Was Mr. Dickens ever at your home?

A. Yes, sir.

64. Do you know from statements made by him whether or not he was aware that you were living at Leesville?

A. He must have known.

65. You were Clerk of Court at the time?

A. I was.

66. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see if it was probably settled, or lived upon, or the homestead laws were complied with.

A. I do not know.

67. Do you know Nat Wazey.

A. Yes, sir; I did know him.

68. How long had you known Wazey at the time you comuted this land?

A. I think I met Mr. Wazey before I was elected Clerk of Court; about the time I began work for Mr. Winfree, in 1899.

69. Did you ever have any talks with Mr. Wazey regarding this land?

A. No, sir.

70. What was Mr. Wazey's occupation?

A. I didn't know; I heard afterwards. Everybody seemed to know he was buying land for Wright-Blodgett Co.

(Objected to on the ground of irrelevancy and on the ground that it hearsay of the rankest character.)

71. Do you know where Nat Wazey lived?

120 A. No, sir. I can not say that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Waezy's activity and occupation for the Wright-Blodgett Co. was?

A. Well, principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory, I think. That is, where he bought the principal part of land.

74. Mr. Hicks, during the life of your entry, before the sale of the land to Wright-Blodgett Co. was, or not, Nat Wazey frequently in the Clerk's Office at Leesville?

A. Up to that time, not very often.

75. Was he there occasionally?

A. Yes, sir.

(Objected to as leading.)

76. Was Wazey ever at your house?

A. No, sir.

77. Do you know from his acts or words that he was aware of your living there?

A. I do not.

78. Do you know whether he was aware that you were Clerk of Court at Leesville at the time he would file deeds and papers with you?

A. Yes, sir.

79. How far was this homestead of yours from Leesville?

A. In the neighborhood of 20 miles. About 20 or 25 miles.

80. Any railroad connecting the places?

A. No, sir.

81. Any trolley lines of any kind?

A. No, sir.

82. How long would it take you to make a trip from your homestead to Leesville?

A. About five hours.

83. By what method of travel?

A. Buggy.

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#### Cross-Examination.

By Mr. Monroe:

1. Mr. Hicks, I understand that on your homestead there was a good house with furniture and bedding and a fireplace?

A. There was no bedding, but furniture and a fireplace.

2. Was there a bedstead in it?

A. Yes, sir.

3. If I understand correctly, this house was known as a double-pen house and was built directly on the line between your homestead and W. O. Allen's homestead?

A. Yes, sir.

4. W. O. Allen lived in part of that house during the life of the entry?

A. Yes, sir.

5. W. O. Allen's is your brother-in-law?

A. Yes, sir.

6. During that time there was a certain acreage of land fenced in and cultivated?

A. Yes, sir.

7. I suppose you had a well and a hog-pen?

A. Yes, sir. We got good water from the spring.

8. Good water in the neighborhood?

A. Yes, sir.

9. Had you any out-buildings; any corn-crib?

A. I did not. Mr. Allen had a corn crib.

10. What family did he have?

A. Wife and one child.

11. You went out every once in a while and stayed several days—a week?

A. Well, one day and night was all the time I had to spend there.

12. I think Mr. Winfree said you had stayed there two weeks. Is he correct?

A. I had frequently spent two weeks looking after matter pertaining to my stock, cattle, and matters of that kind and during the time I would visit my homestead.

13. And these cattle were around on this acreage?

A. Yes, sir; in the cattle range.

122 14. During the life of your homestead your fences and house were kept in order?

A. Yes, sir.

15. I suppose Mr. Allen and his family kept your part looking habitable and clean so that you would find a clean place to sleep?

A. Mr. Allen looked after my part of it while he was there.

16. You say you made 18-mile ride day before yesterday in 2 1/2 hours?

A. Yes, sir.

17. Now, between friends, Mr. Hicks, don't you think you were laying it on thick when you said it took you five hours to drive twenty miles to your homestead?

A. It frequently took me all day. I had friends on the road where I would stop and lose time.

18. You were in politics in that part of the parish at the time and in making these political pilgrimages it would frequently take five hours or longer, I suppose?

A. Yes, sir.

19. But at a good, hard drive how long?

A. Four hours in a single rig. If I were going after a doctor in Leesville I could make it in 2 1/2 or 3 hours. Four miles an hour was a good, average gait for that country.

20. Mr. Hicks, one thing I want to straighten out. The government has alleged that your entry dated Oct. 9, 1898.



I understood on your direct examination that you said you thought it was in 1899. Did you speak from recollection?

A. Yes, sir. I would not be positive about it. It was after I moved to Leesville. I might have moved there in 1898 instead of 1899. The records will show.

21. When did you first know Mr. Dickens?

A. I knew him after I was elected.

22. Clerk of Court?

A. Yes, sir; in 1900.

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## Re-Examination.

By Mr. Elstner:

1. Do you know how long Mr. W. O. Allen resided with his family on the homestead entry?

A. Mr. Allen moved from Leesville with his family with the intention of moving directly on his homestead, but after reaching my mother's his wife's health failed and he was in bad health, too, and he occupied a house about three miles from his homestead on account of being near a doctor; but he worked the land on his homestead and visited it frequently.

2. To your own knowledge did he, with his family, reside upon his homestead at all?

A. No, sir.

3. How much of that land did Mr. Allen cultivate?

A. About two acres. That is, about four acres all told; about two acres on his part.

4. How many crops did he raise?

A. Only one, I am pretty sure.

5. Do you know of what that crop consisted?

A. I do not.

6. Do you know whether it was cultivated or not?

A. No, sir.

7. Mr. Hicks, was the crop either on your place or on the place of Mr. Allen cultivated in a manner in which a farmer usually cultivates his crop?

A. Well, about, an average for that part of the country. I hired mine cultivated. Had a two-bit pony and a two-bit plow.

8. And you raised about a two-bit crop?

A. Yes, sir; a few barrels of corn, but I don't remember just how much. Mr. Allen looked after it.

## Re-cross Examination.

By Mr. Monroe:

1. Did I understand your testimony to be that Mr. Allen had not lived in the house there at all?

2. He did not live there with his family. He only visited it but was there a great many times.

2. Did he sleep on the place frequently?

A. Yes, sir. Every time I was there, and I think I heard him say he stopped over there between the times we were together.

3. Then, as I understand your testimony, Mr. Allen would stop and reside there as much as his wife's health would permit him.

A. She never spent the night there.

4. During his absence at night at that place his wife was sick some distance away?

A. Yes, sir. He left Leesville with the intention of staying there, but had to stop on account of his wife.

5. But he stayed there and slept there at all times except when his wife's condition required him to be with her?

A. No, he did not do that.

6. What did he do.

A. As I before stated, on account of his wife's illness and he, himself, being in bad health, he did not move into this house on the homestead as he had intended doing; but he was with me every night I stayed there and slept in his end of the house. And I have understood from him that he was there at times between the times we were together there.

7. Mr. Hicks, had you or Mr. Allen any reason to believe that you had not complied with the law in regard to home-steading?

(Objected to because that is a conclusion of law to be drawn by the Court from the facts in the case and it is not competent for the witness to state his opinion about it.)

(Mr. Monroe: Mr. Examiner, I will ask that you instruct this witness that counsel for government has the privilege of making what objection he sees fit, but that he, the witness, is to make his answers just as if no objection of any kind had been made.")

6. Did you not know, as a matter of fact, that along about the time of assigning this consent pro confesso that you were not to be prosecuted in this case?

A. Well, I don't remember, Mr. Elstner, any direct statement to me, but reading between the lines I supposed there would be no prosecution.

7. Were you not aware of the fact that you had not been sworn and that I, as U. S. attorney, was aware of that fact?

A. Yes, sir; I was aware of the fact that I was not sworn. I did not know that you knew it.

8. You had no reason to believe that I discredited your assertion that you had not been sworn?

A. No, sir.

9. You know that the proof in the cases of J. J. Hicks and W. O. Allen were both made before J. M. Boyd?

A. They were.

10. Do you know Mr. Boyd?

A. Yes, sir.

11. Do you know that it is currently reported and has been asserted by Mr. Boyd that he never swore any witness; that he did not think it necessary; that it was merely a matter of form?

A. Yes, sir.

12. Were you present at the Court at Alexandria  
128 when J. M. Boyd, U. S. commissioner, was called as a witness to prove the administration of an oath by him as such official to the homesteader and his witnesses in the case of commutation proof and heard him state under oath that he regarded this proof as a mere matter of form and never inquired the parties to be sworn?

A. I was.

(It is conceded on the part of the government that these commutation proofs bore the certification of the several officers before they were taken that the oath was administered.)

TESTIMONY OF WALTER O. ALLEN, WITNESS IN  
BEHALF OF COMPLAINANT.

Direct Examination.

By Mr. Mills:

1. Where do you live?
- A. Leesville, Vernon Parish.
2. How long have you lived there?
- A. Since 1889.
3. Do you know Joe J. Hicks?
- A. Yes, sir.
4. How long have you known him?
- A. Twelve or fourteen years.
5. Are you related to him?
- A. By marriage; he is my brother-in-law.
6. Do you know where Mr. Hicks was living during summer and fall of '98?
- A. In Leesville.
7. Was Mr. Hicks married at that time?
- A. Yes, sir.
8. Did he have a family?
- A. Yes, sir.
9. How large?
- A. Four children.
10. Did his family live with him at Leesville?
- A. Yes, sir.
11. From that time on how long did he continue to live there?
- A. Up to the present time.
12. Has he ever resided anywhere else that you know of?
- A. No, sir; not that I know of.
13. Do you know of your own knowledge whether or not any time in 1898 or 1899 Mr. Hicks made any homestead entry in Vernon Parish?
- A. Yes, sir.
14. Do you know whether he made more than one?
- A. Only one homestead.
15. Do you remember the description of that

A. Northeast quarter Section (I don't remember the section), Township 2, Range 5 West.

16. Did you make any homestead entry yourself?

A. Yes, sir; adjoining that. The southeast quarter of same section. His was the northeast quarter.

17. Do you remember when your entry was made?

A. No, I don't remember now.

18. Did you and he make your entries together, or at the same time?

A. He made his a little before I did, I believe.

19. Do you remember when you made yours? Approximate the month and year.

A. Sometime in 1898, I believe; I don't remember exactly.

20. Do you remember what improvements Mr. Hicks put on his homestead?

A. He and I made a combination house—a double house—on the dividing line, one half of the house on each side.

21. What other improvements were made on his side, if any?

A. We made an entire enclosure of about two acres—that is, half on each side of the dividing line.

22. Did Mr. Hicks ever plant any crop that you know of?

A. Yes; some peas were planted on it.

23. Did he plant that lot of peas himself or hire it done?

A. I could not say now; I don't think he planted them.

24. Do you know whether this crop ever matured and was harvested or not?

A. It never matured to make enough for the seed that was put in the ground.

25. Was it cultivated in any way or any attention paid to it after planting?

A. Not to amount to anything.

26. How often did Mr. Hicks to your knowledge go from his home in Leesville to this land?

A. At intervals of three, four, five or six months.

27. Did he take his family with him on these trips?

A. I never saw any of his family there.

28. How long would he stay upon the land on the occasion of these periodical visits?

A. Twelve to thirty-six hours. Sometimes that included the entire time gone, coming and going.

29. Did you ever know Mr. Hicks to stay upon this land for any longer period than that?

A. No longer than twelve or fourteen hours that we would be together. He would stay overnight from about five in the evening until early next morning.

30. Then the only actual length of time that you ever knew Mr. Hicks to be on that land was a periodical visit every three, four, five or six months and he would then stay overnight?

(Objected to as leading.)

A. Yes, sir; and he would stay overnight.

#### Cross-Examination.

By Mr. Monroe:

1. You say you and Mr. Hicks had a double house? What is commonly called a double-pen?

A. Yes, sir.

2. Any doors or windows?

A. Doors, but not the windows.

3. Was the enclosure actually fenced in?

A. Yes, sir.

4. Any out-buildings?

A. A stable.

5. Did you have any orchard trees planted?

A. Yes, sir.

6. What else did you have planted in the enclosure besides peas and trees?

A. A little corn at one time.

7. Were a few barrels of corn made in the enclosure?

A. A few barrels? I never saw it.

132 8. Mr. Hicks stated that there were a few barrels of corn made.

A. I didn't see any.

9. Mr. Hicks stated that you and your wife started out to live in that double-pen house and that your wife was taken sick.

A. That is correct.

10. To what extent did you live in that double-pen house?

(Objected to by counsel for government on the ground that

any residence by Mr. Allen on his homestead is irrelevant in this case.)

A. At about the same intervals as in Mr. Hicks' case—two or three or four months apart; I would stop over a night or a day.

11. Did you personally do any work in the field inside that enclosure?

A. I never did; that is, in the fields.

12. What work did you do there?

A. I planted the trees, built fences and out-houses.

13. Where were these out-houses; on your side or Mr. Hicks' side?

A. On my side of the line.

14. When you made your commutation proofs, Mr. Allen, at that time didn't you and Mr. Hicks verily believe that you had complied in all respects with the law?

(Objected to by government as to what Mr. Hicks believed on the ground that it could be only hearsay.)

A. Yes, sir; that is my impression. I don't know what Mr. Hicks thought.

15. Did any of your family or Mr. Hicks family remain for any length of time in that house besides you and Mr. Hicks?

A. My wife and child did.

16. How long did they stay?

A. One night and part of the next day, one time.

17. Where was the spring in that neighborhood?

A. A little branch rang [ran] through the adjoining forty on the west.

18. Was there a spring on Mr. Hicks' forty?

133 A. No, on the opposite side; on the north side.

19. If he testified that there was a spring there would you contradict it?

A. If there was it was in the north side of the forty. I was on the south side and it was a half mile away and I never went to it if there one there.

In Hicks Case—No. 382.

In this case counsel for government offers a copy of the

records of the general land office of the Department of the Interior, showing the various papers filed and issued in the matter of the homestead entry of J. J. Hicks, #21,228, and rests his case.

In Hicks Case—No. 382.

In this case counsel for defendant offers the patent marked "W-B Co. P," and rests his case.

134 Case No. 383—W. O. Allen.

WALTER O. ALLEN, witness in behalf of complainant, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

1. Mr. Allen, what is your full name?
- A. Walter Oliver Allen.
2. Where do you live?
- A. Leesville.
3. In Vernon Parish?
- A. Yes, sir.
4. How long have you resided there?
- A. Since 1898. Might have been a little earlier than that, but I think about 1898.
5. Did you at any time in the Parish of Vernon make a homestead entry on any government lands?
- A. Yes, sir.
6. How many?
- A. One.
7. Do you remember when that was?
- A. I don't believe I do.
8. About when?
- A. Latter part of 98 or early part of 99.
9. Do you remember the numbers and description of the lands you entered?
- A. The southeast quarter. I don't remember the township and range.
10. Was the homestead entered by you joined on the south by an entry made by J. J. Hicks?



A. Yes, sir.

11. After making this entry what steps did you take to comply with the law as to residence, cultivating and improvements?

A. The first thing I built a combination house, Hicks and I together.

12. Explain all the steps taken by you as to improvements?

A. This house was built by Hicks and myself, he giving the contract to Mr. Bass. He built both houses.

13. Did you cultivate the land in any way to any extent?

A. Mr. Bass or Lawrence did no cultivating.

14. To what extent was cultivation done?

A. About two acres.

15. Two acres all together, or in common?

A. Two acres all together; one acre on my side and one acre on his side.

16. Was any planting done on your side of the line?

A. Yes, sir.

17. What?

A. Peas, the first crop planted.

18. Did that crop ever mature; was the crop ever gathered?

A. No, sir; nothing but pea-vines made.

19. Was that crop cultivated after it was planted?

A. No, sir; it was sowed broadcast and could not be cultivated.

20. Any trees planted?

A. Fruit trees; some peaches and plum trees.

21. Were those trees cultivated?

A. I kept the grass away from them and fertilized them.

22. This house that you built, did it have doors and windows?

A. It had doors and a chimney.

23. No windows?

A. I believe not; that is, no glass. Had openings for windows.

24. What do you suppose, Mr. Allen, was the value of your part of that house? What was the cost of putting it up?

A. About 25.00. Got the timber out on the ground. To buy the lumber and build it would be worth \$100.00 or \$150.00 probably.

25. In what way did you build yours?

A. I got the timber off the ground.

26. Its cost to you was about \$25.00?

A. Yes, sir; that was the price I paid for it.

(Objected to as leading.)

27. Did you ever take up your actual residence on this land?

A. No, sir.

28. Where did you live at the time you made your entry?

A. In Leesville in Vernon Parish.

136 29. Was you married at the time?

A. Yes, sir.

30. You had a wife and children?

A. Wife and one child.

31. Your family lived with you in Leesville?

A. Yes, sir.

32. How often did you visit, or were upon this entry?

A. Four, five or six months at intervals.

33. Upon these periodical visits how long did you remain on the land?

A. Sometimes just over night, arriving in the middle of the afternoon. We would leave sometime the next day. Generally always that way.

34. That was the extent of your residence upon this land?

A. Yes, sir.

35. Did you ever complete your entry in any way? Did you take any steps toward getting a title to the lands?

A. I never did myself, but it was obtained. I never made application. It was all done through Mr. Hicks.

36. Mr. Allen, I am not asking you about the sale of this land, but whether or not you commuted this land?

A. It was commuted; yes, sir.

37. Do you remember when you made commutation proof?

A. It must have been June, 1901.

38. Before whom did you go to make such proof?

A. I did not go; they came to me. I was in bed sick at the time.

39. Who came to you?

A. Jas. M. Boyd.

40. Who were your witnesses on that occasion?

A. Mr. Bass, and I have forgotten the other one.

41. How did it happen Boyd came to you? Did you send for him?

A. It was advertised to be proved up at a certain time and when that time came I was sick and Joe Hicks was in Leesville and Mr. Boyd made up the papers, examined the witnesses and came to me to sign the final proofs. I heard nothing from the witnesses—what questions were asked, etc. I  
137 don't know anything about it. I merely signed the papers lying in bed.

42. Mr. Allen, in commuting this land was it necessary to pay any sums of money to the government?

A. Yes, sir; it was.

(For emphasis counsel for defendant objects to this witness giving any testimony but what he knows of his own knowledge and especially anything he knows from hearsay.)

43. How much money was required to commute this land?

A. \$2.50 per acre.

44. How many acres had you entered?

A. 160 acres.

45. Did you furnish or pay this money yourself out of your own funds?

(Counsel for defendant makes the additional objection that any testimony along this line is irrelevant, as it does not tend to prove or disprove any act or allegation set at issue in this case, the bill confining itself to a attack upon homestead entries on the ground of failure to make improvements and actually living on the lands.)

(Counsel for government contend that the complaint in this case and the answer of the defendant, Wright-Blodgett Co., put at issue the question of the good or bad faith of the Wright-Blodgett Co. in the purchase of this land and their knowledge or lack of knowledge of the compliance by the entryment with the laws in regard to homestead entries and that they expect to show by this witness that the money to commute these lands was furnished by the Wright-Blodgett Co., or its agents and to thus show its knowledge of bad faith in the case.)

A. I had no funds. I had no money to pay it.

46. You obtained this money from some other source?

(Objected to as leading.)

A. Yes, sir.

138 47. From whom?

A. I never received a dollar from anybody.

48. This money was paid before you by someone else?

(Objected to as leading.)

A. It was.

49. By whom?

A. Mr. King furnished the money.

50. Who was Mr. King?

A. Supposed to be representing the Wright-Blodgett Company.

(Objected to as hearsay.)

51. What is your reason for believing that he represented the Wright-Blodgett Company?

A. He was the man that offered to buy, representing himself as representing the firm. He said he was.

(Objected to as hearsay and irrelevant.)

52. Upon this commutation or after this commutation did you receive a final receipt, register or receiver's receipt?

A. Yes, sir; I did.

53. Do you still own these lands?

A. I do not.

54. When did you part with them?

A. Within thirty days after I received the receipt.

55. How did you part with them?

A. A consideration of about \$800.00.

56. You sold them?

A. Yes, sir.

57. Who to?

A. To Wright-Blodgett Co.

58. Was it cash or credit act?

A. Cash.

139 59. Examine this copy of deed filed in evidence and see if, to the best of your knowledge and belief, that is the deed passed in that transfer.

A. Yes, sir; it is a copy of it.

60. Who represented the Wright-Blodgett Co. in that sale or transaction?

A. King was the man's name. I don't know his initials.

61. You don't remember his first name?

A. No, sir.

62. Where were you when you signed the deed to that land?

A. It seems to me I signed it in the clerk's office at Leesville. I couldn't say positively.

63. Was Mr. King present at the time?

A. I cannot tell you that now.

64. Who was it carried on the negotiations for the sale, made the offer and paid the money?

A. It was all done through Mr. J. J. Hicks.

65. On completing this sale were you paid the whole \$800.00 or were you paid \$800.00 less the amount that had been advanced for commutation?

(Objected to as leading.)

In what way were you paid for this land?

A. By check from J. J. Hicks.

66. What was the amount of this check?

A. The check I received from him was something over \$700.00. It was a consideration between him and I for difference between amount paid for the land and what I owed him and he gave me the balance.

67. Then Mr. Hicks is the one who would know the amount paid by the Wright-Blodgett Co. for the land?

A. Yes, sir.

68. You received less than the \$800.00 recited in the deed?

A. Yes, sir.

59. Was Mr. King, or any other agent of Wright-Blodgett Co. ever out to that homestead entry to make any investigation of it?

A. Not that I know of.

By Mr. Monroe:

1. Mr. Allen, I understood you to say that you personally went out onto this piece of land that was homesteaded and and set out a number of peach and pear trees and continued to cultivate them, keeping the grass away?

A. Just at intervals. When I went out I did such work.

2. Besides the fruit trees, there was a fence around the enclosure which was continually kept up?

A. Yes, sir.

3. And that there was a house, being a part of this double-pen house, on your homestead entry and that was kept in repair?

A. Yes, sir.

4. That you personally built a barn upon this land?

A. Yes, sir; I did.

5. That was likewise kept in a state of repair?

A. It was never quite completed.

6. What furniture did you have in the house?

A. I don't know that I had any. Chair and bench.

7. When you stayed over night and when your wife and daughter stayed over night, as you testified they did, where did they sleep?

A. We fetched bed-clothes with us in a wagon and used them while we were there and took them back.

8. Leave any bedstead in there at all?

A. No, sir.

9. Any cots?

A. No, sir; never had one there.

10. Was there a bunk built in the house?

A. There might have been something like that. I believe there was something of that kind.

11. Don't you remember a bunk there, Mr. Allen?

A. No, I couldn't tell whether there was or not.

12. Your impression as you sit there is that there was?

A. A very faint one.

13. You do not deny that the signature on the commutation proof made in that case was a genuine signature, do you?

A. I signed it.

14. You are an educated man, are you not?

- A. Not very.
15. You can read and write fluently?
- A. Yes, sir; a little. Have a small, limited education.
16. Were there anything else in the way of improvements on that homestead except what you have stated?
- A. Well, I don't think there was anything.
17. There were peas and corn planted?
- A. Yes, sir.
18. Did you do any work on that crop of peas and corn at all?
- A. I did a little with the hoe on the corn.
19. Did Lawrence or Bass do any work?
- A. Yes, Lawrence.
20. Didn't someone gather some corn made in that clearing?
- A. Well, when I left there the last time it was in August and the corn matured after that and he might have gotten it.
21. How much of a stand was there in August?
- A. Just scattering stalks.
22. Any of it coming into ear?
- A. There were a few tassels. That would indicate that there were ears started.
23. Mr. Boyd came to make that commutation proof while you were sick in bed at the request of Mr. Hicks?
- A. Yes, sir.
24. Did you personally have any conversation with Mr. King about advancing any money for the proof?
- A. No, sir.
25. All you know about that was from hearsay and what you were told by somebody?
- A. That is about right.
26. By whom were you told?
- 142 A. In Hicks' presence with Mr. King I was told that Wright-Blodgett people would buy our homesteads together.
27. Did Mr. King ever say to you that he was a representative of the Wright-Blodgett Co.?
- A. Yes, sir.
28. He told you that personally?
- A. No, I don't know that Mr. King ever told me that he represented them personally.

29. What you know about that was what you were told by someone else?

A. Yes, sir.

(Counsel for defendant here moves that all testimony on the subject of the supposed agency by the supposed Mr. King for the Wright-Blodgett Company be stricken out as hearsay in the first place and as irrelevant in the second place.)

30. You don't recall at what time this conversation with Mr. Hicks relative to the money supposed to have been advanced by King took place?

A. Well, the date of the sale would indicate the time.

31. It took place within a few days before the sale?

A. Yes, sir.

32. And that is the only time that any conversation was had with you and Hicks in the presence of King relative to the purchase of lands by Wright-Blodgett Company?

A. Yes, sir.

33. All you know about the commutation proof, what was done prior thereto, was the fact that you signed these documents on your sick-bed and what Mr. Joe Hicks told you?

A. Yes, sir; that is about it.

(Counsel for defendant moves to strike out all testimony on that subject on the ground of hearsay.)

34. You don't know of your own knowledge how much money was received in cash by Hicks at the time of the sale of this 160 acres, do you?

A. I never saw the original check.

25. How many times all told did you stay over night on that homestead of yours?

A. Possibly fifteen.

36. Possibly more?

A. Maybe so.

37. As many as twenty?

A. That would be the limit.

38. At the time you made your commutation proof you honestly believed that you had complied with all the requirements of the law in order to obtain that 160 acres, did you not?

A. I did, I did not abandon it at any one time more than



four or five months, but I considered that six months abandoned the homestead.

39. What was this arrangement between Hicks and yourself as a result of which he gave you \$700.00 instead of \$800.00?

A. Well, a part of that was money I had borrowed from him. I had been improving some property in Leesville and I borrowed a small amount of money from him and had never paid it back 'til then.

40. You received, then \$800.00 less the amount borrowed from him?

A. Yes, sir.

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Walter O. Allen Case—No. 383.

2nd Examination of WALTER O. ALLEN, Witness.

(Mr. Mills:)

1. Do you desire to change you testimony in any way since you left here?

A. I made a mistake about the name of the representative of the Wright-Blodgett Co. I stated his name was King.

2. You wish to change that statement?

A. Yes, sir.

3. What was his name?

A. Dickens.

4. Do you remember his first name?

A. I do not.

Cross-Ex.

By Mr. Monroe:

1. How did you refresh your memory, Mr. Allen?

A. I spoke of having met the representative of Wright-Blodgett Co. I called him King. I was introduced to him at the time.

2. How did you refresh your memory since you left here 20 minutes ago?

A. Hearsay.

3. From whom?

A. Mr. Hicks.

4. How?

A. He asked me how I got mixed up on King.

5. If I understand you correctly, the only thing you know about this man is that Mr. Hicks told you his name was Dickens and he told you he was a representative of Wright-Blodgett Company?

A. He introduced him to me as a representative of Wright-Blodgett Co.

6. All that you know about this man is Hicks' statement?

A. Yes, sir. As I stated before, I was introduced to him as Mr. Dickens, a representative of Wright-Blodgett Co.

7. And this introduction took place at the time you stated it did take place? That was the only time you saw him personally?

A. I don't know whether it was or not.

8. Do you remember seeing him any other time?

A. I do not; no, sir.

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Testimony of MR. HICKS, Witness in Behalf of Complainant.

Direct Examination.

By Mr. Mills:

1. Where do you live?

A. Leesville.

2. How long have you lived there?

A. I moved to Leesville in July, 1898, or 1899.

3. Do you know W. O. Allen?

A. Yes, sir.

4. Is he related to you?

A. My brother-in-law.

5. Did you know Mr. Allen in 1898 when you went to Leesville?

A. Yes, sir.

6. Where was he located at that time?

A. He was living in Leesville.

7. Do you know of your own knowledge whether he made a homestead entry about that time?

A. Yes, sir.

8. Do you know the description of the land that he entered of your own knowledge?

A. Section 8, Township 2 North, Range 5 West; the south-east quarter.

9. Did you also make a homestead entry about that time?

A. Yes, sir.

10. Where was his land in regard to the entry made by you?

A. His land was south of mine. Adjoining mine.

11. Do you know what improvements, if any, Mr. Allen put on this land that he entered?

A. There was a double-pen house built, one end standing on his land, and he also built a crib on his about 12x14, as well as I remember.

12. You say a double-house?

A. A double-pen house; and I had a surveyor to go and run the line around the land and a line dividing our homesteads.

13. And this house—was it built on each tract of land?

A. It was two separate houses but a roof that extended over, covering the wide space between the houses—something like 20 feet, as well as I remember.

14. What other improvements did he make on his land?

A. Something like 1 1/2 or 2 acres cleared and fenced.

15. Did all of this land cleared belong to both of you?

A. There were about four acres, equally divided on each one.

16. You did not have the land cultivated surveyed?

A. No, sir; just an estimate.

17. What crops, if any, were planted by Mr. Allen?

A. I don't know about his crop.

18. How often did you go out to the location of these entries where you could see them?

A. About once in every four months.

19. What did you observe on these trips as to the character of the crops on Allen's homestead?

A. The last time I was there was in the early part of May, 1901—April or May—and of course his crop was just planted and coming up. Possibly a little corn and some peas, I think. I am not positive.

20. That the only crop you know of?

A. Yes, sir.

21. Was that crop harvested?

A. I do not know.

22. Do you know whether or not Mr. Allen kept any furniture in that house?

A. I don't know.

23. Did you ever see any there?

A. I don't remember that I did.

24. You were in his side of the house but never saw any furniture there?

A. I don't remember that I did.

25. You stated that in '98 or '99 Mr. Allen was living in Leesville?

A. Yes, sir.

26. Was he living at Leesville at the time of his entry?

147 A. Yes, I think he was. He lived at Forest Hill in Rapides Parish and it could be possible that he made the entry before he came to Leesville, but I could not be positive as to that.

27. Is it not a fact that your entry and his were made practically together?

A. Not sir; I think my entry was made first. As well as I remember my brother first homesteaded the land he homesteaded and relinquished it and Allen took it up, but I don't remember exactly the time, whether before or after I took mine up.

28. During the years '99-1900-1901 where did Mr. Allen live?

A. Fourteen or fifteen months of the time, or possible [possibly] longer, he lived out near his homestead and the balance of the time before that, it might be possible that he was living at Forest Hill. He made his entry and during the first six months allowed he might have been living at Forest Hill. After he made his proof and got final receipt he move back to Leesville. I don't remember in what month. Early in the fall.

29. Do you know how often Mr. Allen would go on his homestead?

A. I don't know except the time he would be with me and I understood from him that he made visits there frequently.

30. Don't you know as a fact that during the whole time of this entry that his actual residence was at some other place?

A. Yes, sir. I so stated before; some three miles from there.

31. Even when, as you stated, he moved into the vicinity of this homestead you know that he maintained his actual residence where he lived with his family some few miles from the homestead?

A. Yes, sir; about three miles.

32. Do you know whether or not Mr. Allen commuted this land?

A. Yes, sir.

33. Remember when?

A. On the same date that I commuted mine. It is shown by the records. I don't remember the date.

34. Did you assist or aid him in any way?

A. Yes, sir; I suppose you would call it a representation or assistance.

35. Did you have anything to do with raising the money that was necessary for him to pay?

A. Yes, sir.

36. State the circumstances, where the money came from, etc.

(Objected to by defendant as irrelevant, as it does not tend to prove or disprove any act or allegation set at issue by the pleadings in this case, the bill having confined itself to attacking these entries for the reason of failure to make proper improvements and live on the land.)

(Counsel for government contends that the evidence is admissible to show knowledge on part of defendant and bad faith on their part, which is set at issue by the pleadings in the case.)

A. It came through the same channel as mine did. It all came together. About the time the fourteen months had expired Mr. Dickens of Lake Charles inquired of me if myself and Mr. Allen intended to sell our land after making proof and I told him that we did. I told him that Mr. Allen was not financially able to raise the money with which to commute his and that I needed some money myself and he said "I will loan you the money" and afterwards, three or four days before the commutation, or the day before taking the proof, Mr. Dickens sent me check for about \$400.00, intending it to cover each

entry, I suppose. After making the proof and sending it, together with about \$200.00 in each case, we were notified by the land office at Natchitoches that the land was within the double minimum, which was \$2.50 per acre. This letter I forwarded to Mr. Dickens at Lake Charles, and he sent me check covering the remainder. I don't remember exactly the amount.

37. Do you remember how this check sent you by Dickens was signed?

A. Signed by Dickens himself, personally.

38. Do you remember who it was on?

39. Do you remember who it was on?

149 A. It was on the Calcasieu bank; I believe it was the Calcasieu National Bank.

40. When did you first meet Mr. Dickens? What were his initials?

A. Thos. B., since I have refreshed my memory. I never knew him until after June, 1900, after I was elected clerk of Court.

41. What was the occasion of your meeting him?

A. He came to my office to file deeds, looking after matters of record and pertaining to lands owned by the Wright-Blodgett Co.

42. Do you know by whom the deeds and papers filed by him were paid for?

A. I do not know.

43. Can you give any information as to who paid these bills?

A. They were paid by Wright-Blodgett Co.

44. Did Mr. Dickens ever state to you by whom he was employed and in what capacity?

A. I don't know that he did.

45. Do you know whether or not he made negotiations for the purchase of lands by the Wright-Blodgett Co.?

A. I don't know anything further than in mine and Mr. Allen's case.

46. The deeds in those cases were made out to Wright-Blodgett Co.?

A. Yes, sir.

47. They were recorded in Leesville?

A. Yes, sir.

48. Do you know who paid the bills for recording these deeds?

A. Paid by Wright-Blodgett Co.

49. After Mr. Allen had made this commutation did he make any disposition of this land that you know of?

A. Yes, sir.

50. What?

A. He sold it to Wright-Blodgett Co.

51. How long after the commutation did he make this sale?

A. I don't remember. Not long; thirty or forty days.

52. Who represented Wright-Blodgett Co. in this sale?

A. Dickens.

53. When Mr. Dickens agreed to advance the money for his commutation was any understanding entered into as to what disposition would be made of the lands after proof was made?

A. No, sir.

54. No understanding that they would be sold or not?

A. He had asked me the question before as whether or not we intended selling our land and I told him we were.

55. Was there any understanding or agreement between you and Dickens or the Wright-Blodgett Co. that after this commutation and issuance of final receipt that the land would be sold to the Wright-Blodgett Co.?

A. No, sir; there was not.

56. When this land of Mr. Allen's was sold to Wright-Blodgett Co. who paid for it?

A. Wright-Blodgett Co.

57. Through whom?

A. Mr. Dickens. As well as I remember the check was sent to me covering the entire purchase for both tracts, and Mr. Allen had gotten money all along from me to live on and so after I deducted the amount he was indebted to me I gave him my personal check for the difference. I don't remember how much it was.

58. Do you remember in this transaction whether or not the amount advanced by Mr. Dickens for this commutation was subtracted from the purchase price?

A. Yes, sir.

59. It was?

A. Yes, sir.

50. In settling for these lands the Wright-Blodgett Co. paid

the consideration recited in the deed less the amounts advanced by Dickens for this commutation in both instances?

A. Yes, sir.

51. In your case and his?

A. Yes, sir.

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Cross-Examination.

By Mr. Monroe:

1. Mr. Hicks, you testified in your own case that at the time the entry was made, or soon thereafter, your brother-in-law, Mr. Allen, moved from where he was living out in the direction of his homestead with the bona fide intention of settling on that homestead, and that he failed to carry out this intention for the reason that his wife was ill and he desired to be near a doctor. Was that statement correct?

A. Yes, sir; I have so understood that was why he did not move. All the way I know.

2. He settled in the vicinity of his homestead but near a doctor?

A. Yes, sir.

3. After he made his commutation proof he moved back from the vicinity of his homestead into Leesville?

A. Yes, sir.

4. On his homestead during the time he lived in that vicinity he placed a house, a barn, a fence, some fruit trees and planted corn and peas, did he not?

A. He planted corn; I could not say about the peas.

5. Did he make any other improvements?

A. I think not.

6. To your knowledge, were his wife and child ever on that homestead?

A. Not to my knowledge. They could have gone out and I would have not known anything about it. I never saw them there.

7. How many times was Allen on that homestead to your knowledge?

A. He was there every time I was there which was once within every four months; that is, every three or four months.

8. And he told you he was there frequently other times?

A. Yes, sir.

9. Every time you went you both stayed over night?



A. Yes, sir; we would go together.

10. Each one stayed on his own side of the 20 feet of space?

A. Yes, sir.

11. Mr. Allen said you gave him a check for  
152 \$700.00 from the proceeds of the sale. Is that correct?

A. I don't remember what I gave him. I gave him a check for the difference, unless I gave him check for the whole and he then paid me out of it. I think he is mistaken about the \$700.00. But he possibly remembers about it better than I do, because he did not have much else to study about and I did.

(MR. HICKS, on being recalled, testified generally as to the issues of good or bad faith involved in the pleadings.)

#### Re-examination.

By Mr. Elstner:

1. When did you first get acquainted with Mr. Dickens?

A. After June, 1900. After I was elected clerk of Court. As well as I remember my first meeting with him came up in in the fall with reference to some tax matters.

2. Prior to the time you obtained this money for commutation proofs for yourself and Mr. Allen had you ever had any financial dealings with Mr. Dickens?

(For the purpose of emphasis the objection is made here that the testimony is irrelevant, not tending to prove or disprove any facts or allegations set at issue by the pleadings in this case.)

A. I did not.

3. He asked you the question if you intended selling this homestead after you had commuted it?

A. Yes, sir.

4. Was it at that time that Dickens offered to loan you the money to commute it?

A. Yes, sir; only a short time before the commutation.

5. Did he ask you to give any notes?

A. No, sir.

6. Did he ask you to give any security either in the way of indorsement or collaterals for the repayment of the loan?

A. He did not.

153 7. You yourself made representation to him with reference to the W. O. Allen homestead?

A. Yes, sir; I did.

8. He offered to lend you for the use of Allen the money necessary to commute the land?

A. Yes, sir.

9. Did he require any note from Mr. Allen for the repayment of this loan?

A. He did not.

10. Did he require any security by way of indorsement or collaterals for the repayment of this loan?

A. No, sir.

11. Did he either in your own or in Mr. Allen's instance stipulate any period at which this loan was to be repaid by either of you?

A. No, sir.

12. Did he make any inquiry of you either as to your own standing financially or Mr. Allen's standing financially?

A. No, sir. He knew my standing pretty well, I guess. I heard of some inquiries he made of other parties, but none of me.

13. You say he knew of your standing financially?

A. I suppose he did from these inquiries he made.

14. Were you a rich man at that time?

A. No, sir; I'm not rich yet. I was a good deal better off then than I am now because I didn't owe anybody then and I do now.

15. Leaving out the question of a man's disposition to pay, was your financial condition, or Mr. Allen's financial condition, such that a man would loan a considerable sum of money to either of you without requiring some security?

A. Mr. Allen's was not, but I suppose mine was, for I owned then a few hundred acres of hard wood land; besides I owned my own home in Leesville and some bank stock. I don't remember how much. With reference to that I thought at the time when Mr. Dickens proposed to lend me the money it was rather a loose way to do business, but it was not incumbent on me to execute a note unless it had been demanded for security.

## Recross-Examination.

By Mr. Monroe:

(Subject to the objection of irrelevancy and only in case same should be finally overruled, counsel for defendant crossed the witness as follows:

1. Was there ever any contract or agreement to sell made between you and Dickens prior to the receipt by you of your final receipt, either in your own case or in the Allen case?

A. There was not.

2. You were under no obligation of any kind at the date of the receipt of your final receipt to make a sale to any individual, firm or corporation?

A. I was not.

3. You had been managing the entire matter for Mr. Allen, had you not?

A. I had.

4. You [your] credit was to some extent pledged to secure the return to Mr. Dickens his loan to Allen, was it not?

A. Yes, sir.

## Re-examination.

By Mr. Elstner:

1. You have a general knowledge of the value of pine lands, have you not?

A. Yes, sir.

2. Are not lands that are in a compact body of more value than lands that are small in quantity and segregated from each other?

(Objected to on the ground that witness is not, or has not, pretended to be an expert real estate or timber man, he having stated that his vocation was clerk of Court.)

155 A. Lands in small bodies are not as valuable as larger bodies.

3. It is a fact, is it not, that in the neighborhood of your homestead the Wright-Blodgett Co. owned large tracts of lands?

(Objected to on the ground that if the witness knows anything about it he knows it from hearsay.)

A. That is a fact. As I have before stated, I have heard of Wright-Blodgett buying land in the southeast part of the parish, but right in the vicinity of where my and Allen's land was situated up to that time I don't think they owned but very little land.

4. How far from what you knew to be Wright-Blodgett tract was your and Allen's homestead entry?

A. Anywhere from six to twelve miles.

5. At the time you borrowed this money did you, or not, reasonably expect to receive a larger price per acre for your land from the Wright-Blodgett Co. than from any other public purchaser?

A. Well, they were about the only people buying in that immediate vicinity at that time. In fact, I believe they were the only people buying that vicinity.

6. When the question was propounded to you by Mr. Dickens, agent for Wright-Blodgett Co., if it was your intention to sell this land after commutation did you not then regard Wright-Blodgett Co. as a prospective purchaser of the land?

A. I had, for the reason that there were no other buyers in that immediate vicinity.

#### Recross-Examination.

By Mr. Monroe:

1. Is it not a fact that within a few days after the completion of your sale to the Wright-Blodgett Co. you were offered a larger price for that land by Mr. Nicholson?

A. Well, Mr. Nicholson was in Leesville and asked if the lands were for sale and I told him they were and he said, "I will see you before I leave town." I did not see him any more, and he went on to Alexandria and executed a deed  
156 there and sent it back for me to sign, without any price being mentioned, as well as I remember, and I think he put in the deed consideration \$900.00 or \$1,000.00 but I mailed the deed back to him.

2. For the reason that in the interim you had sold to Wright-Blodgett Company?

A. I had at that time.

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Case No. 383—W. O. Allen Case.

The government offers in this case certified copies of the records of homestead entry #21,233 of Walter O. Allen under seal of the Department of the Interior, general land office, showing all papers filed and all receipts issued in the matter of the entry, and asks that same be filed and marked Exhibit "B."

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No. 363—Wazey Case.

GREEN FOSHEE, witness in behalf of complainant, being duly sworn, testified as follows:

(Counsel for complainant asks that the testimony of Mr. Foshee be inserted in each of the nine cases.)

(Counsel for defendant objects on the ground of irrelevancy.)

(Mills:)

1. Where do you live?

A. Vernon Parish.

2. How long have you lived there?

A. Nearly all my life; a long time.

3. Near what towns do you live?

A. Pitkin.

4. How long have you lived at Pitkin?

A. For six or seven years' exception I have lived in the neighborhood of Pitkin ever since I was seven or eight years old.

5. Did you know Nat Wazey?

A. Yes, sir.

6. Did you know the Widow Graham?

A. Yes, sir.

7. Do you know of your own knowledge whether Nat Wazey ever bought any improvements on land from the Widow Graham?

A. Yes, sir.

8. When was that?

A. I could not say right positively; about 7 or 8 years ago to the best of my knowledge. I can't say what date.

9. Do you know where the Widow Graham lived at the time?

A. Yes, sir.

10. Where?

A. At the time he bought her improvements she was living on a creek that we called Ten-Mile.

11. What section?

A. I couldn't tell you what section.

12. Were you present when Wazey bought her  
159 out?

A. I was present when he made a contract with her to buy the property from her.

13. Did he make any statements at the time as to why he wanted to buy the improvements?

(Objected to as hearsay.)

A. I can't hardly say that I recollect.

14. Did he at any time ever tell you why he wanted those improvements?

(Objected to as hearsay.)

A. Yes, sir.

15. What did he tell you?

A. That he had homesteaded the place and he didn't want to take it away from her without paying her for it.

16. Then, from his statements you were led to believe that he had already made a homestead entry on the land before he bought her improvements?

(Objected as leading.)

A. I think he had; yes, sir.

17. After this purchase did the Widow Graham continue to live there or move off?

A. She moved off some time after. I don't remember just how long. Some two or three months.

18. After she moved off of this land did anyone else move on that you know of?

A. No, sir.

19. At the time that Nat Wazey purchased these improvements from Mrs. Graham where was he living?

A. Well, I couldn't hardly tell you. He was a timber man and he was over the country in different places at that time.

20. Do you know where his home was at that time?

A. No, sir; I do not.

21. Do you know of any place in that country that he lived or had a home about that time or short time afterwards?

A. Afterwards I did.

22. How long afterwards?

160 A. I can't say positively, but to the best of my knowledge over 4 mos.

23. During the 4 months after purchasing these improvements from Mrs. Graham where was he living?

A. At that time he moved his family near a little place called Pitkin now.

24. What was it called then?

A. Weldon's place at that time.

25. How long did he live there?

A. I am unable to say.

26. Estimate it, please.

A. I don't think he stayed over two or three months.

27. How far was this place from the Widow Graham's?

A. I always called it 12 miles. I don't think it was quite that far.

28. Where did Wazey live after leaving Weldon's place?

A. He bought improvements from Dr. Stallsby on a place about 2 or 2 1/2 miles east of the place he was living at that time.

29. After buying this place did he move there and live there?

A. Yes, sir.

30. How long did he live there?

A. I can't say; I don't remember.

31. A day or a year?

A. A couple of years; maybe longer. He was there as long as I was in that section of the country.

32. Did you ever know him to live at any other place in that country except on the Weldon place and on this place he got from Stallsby?

A. No, sir. Of course, he was away from there half the time because he was working for some other parties and he was

at home very little himself, but his family was there most of the time.

33. How far was this place he bought from Stallsby from the property on which was located these improvements bought from Mrs. Graham?

A. It would have been eight or nine miles. We called the distance over the road, I couldn't say exactly.

34. Do you know of your own knowledge or from statements made by Wasey whether he ever made a homestead entry on this land on which were situated the improvements bought from Mrs. Graham?

A. Yes, sir; I think he did. He told me he did.

161 35. Do you know whether he ever commuted that entry or took any steps to prove it?

A. I did not at that particular time.

36. Do you now?

A. Yes, sir.

37. How do you know it now?

A. I know it now by showing that I was a witness and I was arrested for being a witness on that homestead.

38. Were you a witness on his final proving up and commutation of that land?

A. If I was I didn't know it.

39. Have you any recollection of being questioned by anyone as to the residence on or cultivation of this homestead of Nat Wasey's?

A. I have not.

39. Have you any recollection of taking any oath or signing any paper in regard to it?

A. I didn't take any oath, but I cannot say I did not sign any paper, because Nat would come to me quite often to sign papers for him.

41. And did you sign without reading them or knowing what they were?

A. Yes, sir; most of the time. I can't read much. I haven't much education. I signed all that I thought were land deeds. I ran a little store and he would bring parties there and ask me to sign paper and I didn't see any harm in it and would always sign the papers he asked me to sign.

42. What statements did he make to you about what these papers were and why he wanted you to sign them?

A. I signed a good many where he just opened the paper



and said, "Sign on this line," and I have heard other parties talk about deeds and heard agreements between them.

43. Did Mr. Wazey ever state to you or in your hearing whether or not he was having deeds made to himself or for other parties or firms?

(Objected to as hearsay.)

A. People he was working for.

44. Who was he working for?

(Objected to as hearsay.)

A. Wright-Blodgett Company.

45. How do you know that?

A. Why, I know, or think I do, because there were some of them in there and he always told me he was working for them, and I saw them all in there quite often.

46. Do you know Mr. Michael Kelly here?

A. Yes, sir.

47. Was he ever in your vicinity?

162 A. Yes, sir.

48. Was he there anywhere around the time of this Wazey homestead entry?

A. I think he was.

49. Do you know what Kelly was doing there in that vicinity?

A. They were took to be timber people.

50. Did you ever see Kelly with Waezy?

(Objected to as hearsay.)

A. Yes, sir.

51. Often?

A. I couldn't say anything about the times; several times.

52. When Mr. Kelly would go into that country with whom would he stay?

(Objected to as hearsay.)

A. Mr. Wazey.

53. How do you know that?

A. I have seen him there and have heard Wazey tell about his being there when I have not seen him.

(Objected to as hearsay.)

54. Did you ever sign any papers for Kelly?

A. I don't remember that I ever did. I wouldn't say that I did or didn't.

55. Was Mr. Kelly ever around when you signed deeds or papers for Wazey?

A. I can't undertake to answer that question.

56. When Mr. Kelly was in your vicinity did you ever see him going around or having any business dealings with anyone but Nat Wazey?

A. I don't think I can give a correct answer to that. I have seen Mr. Kelly talking with other people, but whether it was on business or not I don't know that I could hardly be able to say.

57. Did you ever hear of any conversation in regard to land matters between Kelly and Wazey?

(Objected to as hearsay.)

A. I don't know that I ever did. I always thought that they seemed to be pretty particular in their way of doing business.

(Objected to as hearsay.)

58. Did you ever hear any conversations between them in regard to land matters?

163 A. I couldn't say positively. Mr. Kelly always seemed to be pretty particular about talking to anyone. I never heard him get out and express himself. I never heard him, while in his presence, talk about his business. He was always joking, or something like that.

59. Did you ever hear Nat Wazey make any statement or say anything in regard to what he intended to do with his homestead after proving it up?

A. No, sir.

(Stenographer's Note—It was just at this point in Mr.

Foshee's testimony that Mr. Mills instructed me to insert his (Mr. Foshee's) testimony in all the cases, and Mr. Monroe objected on ground of irrelevancy. See page 1 of this testimony.)

### Cross-Examination.

By Mr. Monroe:

1. Do you know any relatives of Nat Wazey by the name of Clingo?

A. No, sir.

2. What brothers or sisters did he have at his death?

A. I don't know whether he left any sisters or not; he left a brother.

3. What is his name?

A. John.

4. Any other brother?

A. I think he had another; I don't know his name.

5. Is his mother living?

A. I don't know.

6. Is M. Wazey living?

A. I don't know.

7. Is George Wazey living?

A. I don't know him.

8. Do you know whether Nat Wazey bought more than one set of improvements from Mrs. Graham or not?

A. I don't know.

9. Do you know of your own knowledge?

A. If she had but one I don't know it.

10. You don't know whether she had or not?

A. No, sir; if she had but the one I don't know it.

11. Are you prepared to swear that you did not sign your name on the commutation proof of Mr. Wazey?

A. No, sir.

12. I hand you a copy of the Times-Democrat of Feb. 26th. Please read the headlines of the first column.

A. I don't know that I can.

13. Well, try it.

A. I can't read it good enough.

14. What is on the first line?

A. Why that is "Navy Yard Commission," or something like that.

15. Second line?

A. "President Appoints Men to Investigate Conditions," or something like that.

16. The next line?

A. "He Disregards and Defies Congress by This Act."

17. On the next line?

A. "Roosevelt Determines to Discontinue Southern Yards."

18. Will you take that sheet of paper and write your name and address on it the best you can?

A. Yes, sir (which he does).

19. How do you spell "land"?

A. I am not very good on spelling, but I reckon l-a-n-d.

20. How do you spell "house"?

A. H-o-u-s-e.

21. Hoe dod [how do] you spell "improvements"?

A. I-m-p-r-o-v-m-e-n-t-s.

22. How do you spell "crop"?

A. C-r-o-p.

23. How do you spell "clear"?

A. C-l-e-a-r-e.

24. How do you spell "season"?

A. I don't know that I can spell it.

25. Try it.

A. S-e-a-s-e-n.

26. How do you spell "resience"?

A. R-e-s-i-d-e-n-c-e.

27. How do you spell "cultivated"?

A. C-u-l-t-i-v-a-t.

28. Mr. Foshee, can you swear positively to it as a fact that you ever saw Mr. Kelly in your neighborhood between Feb. 9, 1900, and May 14, 1901?

A. No, sir; I cannot remember what dates he was there. I saw him several times, but I cannot say what dates.

29. Can you swear positively to it as a fact where Nat Wazey was living between Feb. 9, 1900, and May 14, 1901?

A. As to the time, I cannot tell you just exactly what date. I cannot remember dates. As I have stated, Mr. Wazey was all over the country and I cannot say where he was lots of the time.

ED DYAL, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Where do you live, Ed?
- A. Elizabeth, on the Santa Fe Railroad.
2. What parish?
- A. Calcasieu.
3. In Louisiana?
- A. Yes, sir.
3. [4.] How long have you lived there?
- A. About a year.
5. Where did you live before that?
- A. In Rapides Parish, about ten miles north of Elizabeth.
6. How long did you live there?
- A. Around the place about ten years. I was born and raised there; not over three or four miles from there.
7. How far is that from Brushy Creek?
- A. About eight miles.
8. What do you do in that country?
- A. Mostly farming. I've been working for the Industrial Co. as laborer the last two years.
9. Did you ever know Nat Wazey?
- A. Yes, sir.
10. How long ago did you first become acquainted with him?
- A. I don't remember. It has been quite a little while. About seven or eight years ago; maybe longer. I know it's been that long.
11. How long had he been in that country before you met him?
- A. I don't remember; I don't think he had been there long.
13. Where was he living at the time you met him?
- A. I think he was there a right smart little while before he moved his family there and was staying about and I met him several times, but the first place I knew him to live was on Brushy Creek near Pitkin.
13. Were you ever on his place there?
- A. Yes, sir.

14. Did he have a home there?

167 A. Yes, sir; I suppose so.

15. You saw it?

A. Yes, sir.

16. Then you know it?

A. Yes, sir; I seen him and his family living there, claimin' it to be his home.

17. How long did he live there to your knowledge?

A. Something like two year.

18. Do you know whether or not Nat Wazey ever made a homestead entry in that country?

A. No, sir; I don't know any more than he told me he did.

19. Did he tell you where it was?

A. Yes, sir; on the Widow Graham's place; that was his homestead.

20. Do you know he made that entry?

A. No, sir.

21. Do you know whether he ever commuted it?

A. No, sir.

22. Did he ever come to you and ask that you be one of the witnesses?

A. No, sir.

23. Did he ever come to you and state that he was about to prove up his entry and was about to commute it?

A. No, sir; not that I recollect.

24. Ever come to you with any paper and tell you that this paper was to be used in proof upon his commuting his homestead entry and that he wanted you to sign it as a witness?

(Objected to as leading.)

A. If he did I don't remember it.

25. Did you ever sign any paper at all at his request?

A. I might have, but if I did I don't remember it. I ain't got any education at all and I can't sign my name, but probably I have signed papers for him.

26. How could you sign papers if you cannot sign your name?

A. Whenever I sign a paper someone else signs it and I touch the pen.

27. Ed, do you know this gentleman sitting here?

168 A. Yes, sir; I think I do. I think I have been informed his name is Mr. Kelly.

28. Did you ever see Mr. Kelly in the vicinity of Nat Wazey's homestead at Brushy Creek?

A. I don't remember that I have, but it seems I have met him betwixt where Mr. Wazey lived and Glenmora in a hack. I am not positive.

29. Anybody else in the hack with him?

A. If it was I don't remember.

30. Did you ever see Mr. Kelly in that vicinity or country on any other occasion?

A. No, sir; I don't think I have.

(At this point counsel for government asks that this testimony be added to the testimony in all the cases.)

(Subject to the right of counsel for defendant to object to it, and for other causes.)

#### Cross-Examination.

By Mr. Monroe:

1. Can you swear positively of your own knowledge that you did not sign Nat Wazey's commutation proof?

A. Yes, sir; if I did I don't know anything about it.

2. You don't know or don't remember?

A. If I signed it I didn't know what I was signing.

3. Have you had any conversation with any official of the government relative to your testimony here?

A. Yes, sir; I don't suppose that I have except with this gentleman.

4. No one else but Mr. Mills?

A. Yes, sir; I have with Mr. Elstner.

5. Did you ever speak to Mr. Goleman about it?

A. No, sir.

6. You never spoke to any government inspector out in that country?

A. No, sir.

7. Any U. S. commissioner?

A. I could have talked with some of those men and not have known it, but not to know it.

8. Aren't you testifying here under the understanding that

if you do give your testimony here there will be no prosecution against you?

A. No, sir; it is not.

9. No intimation of that kind made to you?

A. No, sir.

10. Ed, have you ever been arrested?

169 A. Yes, sir.

11. For what?

A. I was arrested on the charge of being a witness on the Wazey homestead.

12. What happened to that case?

A. I don't know; I gave bond and was put in jail.

13. You was charged with perjury?

A. I don't know what I was charged with.

14. At the time you gave bond did you have any talk with any government official about testifying in that case?

A. If I did I don't remember it.

15. Was it intimated to you that if you would testify in that case that the charge against you would be dropped?

A. No, sir.

16. Was that ever been intimated to you or told to you at any time?

A. I don't think it has.

17. Have you ever been arrested at any other time?

A. No, sir.

18. Do you mean to tell me, Ed Dyal, that you have never been in the penitentiary for the killing of Sam Buxton?

(Objected to on the ground that it is entirely irrelevant and has no tendency to prove or disprove any of the issues in this case.)

(Counsel for defendant suggested that it might have some bearing on the credibility of the witness.)

A. No, sir; not for the killing of Sam Buxton. I thought you meant had I been arrested since that arrest of this land proof? I have been arrested more than twice. I was put in the penitentiary; there was some people's sheep was killed and put in the creek above where me and my father lived and I was put in the penitentiary for that, and I had been arrested for the killing of Sam Buxton, too.



19. How long a time did you serve in the penitentiary?

A. Nine months.

20. In what year was that?

A. I don't remember; couldn't tell you how long it has been.

21. Was that the only time you have ever been in jail?

A. No, sir; I have been in jail before I was sentenced for the sheep. The first time I was ever in jail was for the killing of Buxton.

22. You were indicted and convicted?

A. I was not convicted. There was a warrant  
170 sworn out and I was arrested and put in jail.

23. What was ever done in connection with that matter?

A. The case was nolleprossed and put out. Pretty certain they never had any trial.

24. You don't know positively whether you were tried and convicted?

A. No, sir; not convicted.

25. What about Pink Buxton?

A. I was only jailed for that. Just accused of being an accessory in the killing.

26. Have you ever been in jail besides the times you have mentioned?

A. No, sir; I don't think I have.

27. Have you ever been arrested besides those times?

A. No, sir; I don't think so.

28. Do you mean you have been in jail so many times you cannot remember how many?

A. I think I have been in mail [jail] five or six times, but all on those cases.

29. Have you ever been indicted for perjury?

A. If I have I don't know it.

30. You cannot swear you have not?

A. No, sir; I cannot.

#### Re-examination.

Mr. Mills:

1. How long prior to the time Nat Wazey came into the country was it that you had this trouble with the killing of Buxtons?

A. I don't remember how long, but it must have been something like seven or eight years.

2. How long prior to the time he came into the country was it that you were in the penitentiary on account of these sheep?

A. Must have been about—well, anyways six or seven years; something like that. I can't keep up with the dates.

3. Where were you when you were arrested on these charges?

A. In the same neighborhood.

4. These facts are generally known in all that community?

A. Yes, sir.

#### Recross-Examination.

Mr. Monroe:

1. You remember the yellow fever of 1898?

A. No, sir; I don't remember it.

2. Have you any way of fixing when you were in the penitentiary?

A. No, sir; I don't know that I have.

3. How old are you?

A. About 35 or 36 years old.

4. How old were you when you were sent to the penitentiary?

A. I couldn't tell you.

5. You were a grown man?

A. I was just about grown.

6. You had voted already?

A. No, sir; if I had ever voted I don't know it.

7. Over twenty-one?

A. No, sir; I couldn't have been over twenty-one, but somewhere along there.

8. Was the time you were in the penitentiary before the killing of Buxton or afterwards?

A. Afterwards.

THOS. C. WINGATE, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Where did you live in March, 1901?

A. In the Town of Leesville, Vernon Parish, La.

2. What was your [your] occupation?

A. At that time I was dealing in timber land principally; buying and selling timber and estimating land.

3. Were you working for any particular company?

A. I could not say that I was. I bought some land for several different companies, but I cannot recall to memory whether I was employed steadily by any one firm.

4. Did you buy and [any] land about that time for the Wright-Blodgett Co.?

A. Well, I bought some for them. I closed up some trades for them, but I cannot say whether it was just in March, 1901, or not. We had so many transactions with people at that time that I cannot tell whether it was in March, 1901, or March, 1900, or March, 1899.

5. Do you remember the first time you ever did any work for W-B. Co.?

A. I can't say that I remember unless I could see the deeds or papers or something to refresh my memory; I could not state positively just when I did the first work for them.

6. In about how many different transactions were you employed by them?

A. I couldn't tell you?

7. Many or few?

A. Very few.

8. What was the nature of these transactions you managed for them? Explain fully as to your dealings, if you were paid for them, by whom and how much.

A. Most of the transactions with the company were in this way: parties would come and want to sell certain land to me. I would not have any money to buy it, and I would know it was lying the Wright-Blodgett territory and would write Mr. Kelly and tell him the description of the land and who offered it and he would write to me and state if he would want to take it and

he would give me instructions sometimes to close the trade out on certain pieces of land. He would pay me my commission.

9. Then in all the transactions you had for the company you simply acted as middle man and referred all matters for definite decision to Mr. Kelly?

A. That is correct. I had no authority to cruise the timber or anything of that sort. I would submit the matter to him and he would notify me if he wanted to purchase the property.

10. Do you know of anyone else in that town or community who was employed by the Wright Blodgett Co. in any capacity?

A. Well, I don't know. I think Mr. Boyd and Mr. Wasey and Mr. Dickens.

11. What Boyd was that?

A. Jas. M. Boyd.

12. What made you think that Jas. M. Boyd was employed by Wright-Blodgett Co.?

A. I don't think that at that time he ever told me he was employed for the company, but he has frequently told me in the last few years about doing certain things for Mr. Kelly—go and meet him on business somewhere, and I suppose it was on land matters.

13. Was Boyd also U. S. commissioner there at that time?

A. I don't know whether he was at that time or not, and I don't know even the date when he was commissioner. I know, however, that he was U. S. commissioner at one time?

14. Examine this copy of deed from Jas. D. Stallsby to Wright-Blodgett Co., dated March 26, 1901, and state if that was one of the transactions in which you represented the Wright-Blodgett Co.?

A. I suppose I must have closed this transaction.

15. Does not your name appear on this deed as witness?

A. It does.

16. What name also appears on that deed?

A. Jas. M. Boyd.

17. The party you have been speaking about?

A. Yes, sir; it is.

18. Have you any recollection of how the consideration was paid in this case?

A. No, sir. I cannot, and could not unless I could see the original deed. The reason why I stated a moment ago that I must have closed up this transaction was for the reason that

only this morning Mr. Stallsby told me that he sold this land through me to the Wright-Blodgett Co. I had entirely forgotten the transaction.

19. Mr. Wingate, did you ever in this case, or any other case, buy lands outright for yourself and then turn around and sell them to the Wright-Blodgett Co., or were deeds made direct to the Wright Blodgett Co. and paid for by them?

A. I am sure that I sold Wright-Blodgett Co. some pieces of land that I acquired in my own name and with my own funds.

20. If the papers in this case show that this piece of property transferred from Mr. Hester to Mr. Stallsby to the Wright-Blodgett Co. could you state whether or not you paid for these lands with your own funds or not?

(Objected to as leading.)

A. I have no recollection of paying Mr. Hester nor Stallsby for this tract of land with my own funds.

21. If you did advance the money to Mr. Stallsby  
174 to pay for this tract of land do you know whether or not you were reimbursed by Wright-Blodgett Co.?

(Objected to as leading, calling for the opinion of the witness and suggestive of the answer.)

A. I think I can answer that positively because the Wright-Blodgett does not owe me a cent, and if I ever was advanced anything on their account they reimbursed me.

22. State whether or not it was your custom in these matters after you had been notified by Kelly and authorized to go ahead and make the trade for the company, did you not on some occasions advance the money or give your personal check for the payment of these lands and afterwards be reimbursed by the Wright-Blodgett Company?

(Objected to as irrelevant.)

A. I generally had authority from Mr. Kelly to make draft on him through the bank to pay for the few purchases I made for him. I may have, on some few occasions, put up the money myself and afterwards Mr. Kelly would reimburse me.

23. Mr. Wingate, did you ever purchase for your own use and benefit the property described in this deed from Stallsby to Wright-Blodgett Co.?

A. I did not.

24. Did you know Nat Wasey?

A. I did.

25. Did you ever have any conversation with him in regard to the business of the Wright-Blodgett Co.?

(Objected to as hearsay.)

A. I have.

26. Do you know that he was employed by the Wright-Blodgett Company?

(Objected to as leading.)

A. Yes, sir; he was their agent.

27. How do you know that?

A. Well, from transactions that I would assist him to make, deeds that I would prepare for him and transactions, sales, etc., I would see him make; that is, purchases of property; I supposed by that he was their agent. I would see him buy land and pay for it.

28. That land was for whom?

A. For the Wright-Blodgett Co.

29. You stated that Mr. Dickens was employed as agent for the Wright-Blodgett Co. On what knowledge do you base that statement?

A. Mr. Dickens was employed at one time by the Wright-Blodgett Co.

30. How do you know that?

A. From correspondence and conversations had with him and business transactions with him. Mr. Dickens was Mr. Kelly's, I would term it, private secretary. He was stationed at Lake Charles, in the office, kept his books, made his maps, looked after his correspondence. If

Mr. Dickens cruised timber or went into the woods and purchased and purchased land I know absolutely nothing about it.

31. In the absence of Kelly who was in charge, in authority, in Lake Charles for W-B Co. during the time Mr. Dickens was employed by them?

A. Mr. Dickens; Pugo & Moss was their counsel. Mr. Dickens would confer with them.

32. Is there any way you can fix the time of employment of Mr. Dickens?

A. No way at all, unless I can see some old papers.

33. Do you know who succeeded him in the office of Wright-Blodgett Co.?

A. I would not be positive, but I think Foster did; Ben Foster, I believe. I am pretty sure that he succeeded Dickens.

34. For how long a time prior to the employment of Foster do you know that Dickens was employed in the office of Wright-Blodgett Co.?

A. I can't say; I don't know. I really don't know whether one year, six months, two years, eighteen months; I couldn't say with any reasonable degree of certainty.

35. Do you know of anyone occupying Mr. Dickenson's position prior to his employment?

A. I cannot remember of anyone.

36. Then Mr. Dickens is the earliest office man for Wright-Blodgett Co. you can remember?

A. To my knowledge he was.

37. Can you state in what year it was you first did work for Wright-Blodgett Co. and kept in touch with their office at Lake Charles?

A. To the best of my recollection it was about 1901, or 1900; maybe a little before, or a little after. I cannot possibly remember these little details.

38. In cases where you purchased land upon a mere receiver's receipt for the Wright-Blodgett Co. had you any instructions from them of any kind as to whether you should make any investigation to find out if the law had been complied with by the entryman?

A. No, sir; Mr. Kelly would require me to send him a description of the land and the man's name.

39. Was that all he would require?

A. He would be the judge of the title and the quantity of timber on the land and if the title was not good he would say it was no good and the transaction would be closed up, and if the timber was no good on the land he would state that the timber was not such timber land as he required or cared to buy. He never gave me any instructions as to titles. He was judge of the title and the timber.

40. Did Mr. Kelly ever come personally to Leesville?

A. Yes, sir.

41. Often?

A. Yes, sir.

42. Would Mr. Dickens ever come personally to  
176 Leesville?

A. Yes, quite frequently.

43. Have you any knowledge of the scope of the employment of Nat Wazey by the Wright-Blodgett Co.; his duties and authority?

(Objection made to any testimony this witness may give not derived from any personal knowledge but from hearsay.)

A. Mr. Wasey was employed to look after the land of the Wright-Blodgett Co., as I understand it; to purchase timber, to prevent trespass on their lands.

44. Where was he located?

A. Located the majority of the time in the neighborhood of Sigler or Slabtown.

45. You think he was their field man?

(Objected to as leading.)

A. Yes, sir; I think so.

(Stenographer's Note: At this point Mr. Mills instructed me to insert all of Mr. Wingate's testimony in each of the several cases.)

#### Cross-Examination.

Monroe:

1. You never knew or heard of Jim Boyd being in the employ of Wright-Blodgett Co. until after Nat Wazey went crazy in 1904, did you?

A. No, sir; that was the first time I knew of his employment. If he was employed before that time I have no knowledge of it.

2. In this Stallsby transaction, relative to which you were examined, will you look at two letters, both dated March 24, 1901, which I hand you and ask if you recognize them?



A. I wrote this letter on March 24, 1901, which is signed by me.

3. Did you make the penciled memoranda on the letter signed by Stallsby?

A. I did.

4. Since reading those letter is your memory refreshed at all in regard to that transaction?

A. Yes, sir; I remember that sale was made.

5. In that transaction, I take it, you were acting in the capacity of a land broker?

A. That was all; I got 25 cents an acre commission. I brought the seller and purchaser together.

6. They knew nothing of each other prior to that time?

A. Yes, sir.

7. It was your service in making them acquainted with each other that you received 25 cents an acre?

A. Yes, sir.

176 1/2 (These letters filed and marked "W-B Co. Hester 1" and W-B Co. Hester 2.")

8. You say at the time this sale was made you knew nothing about the Hester claim being a homestead case at all?

9. And that impression was conveyed to the Wright Blodgett Company?

A. The letter shows what I conveyed to them.

10. Mr. Wingate, had you any personally knowledge other than what you heard from people as to what the employment of Mr. Wasey was by the Wright-Blodgett Co.?

A. Well, I will answer that of course I was bound to know he was Wright-Blodgett's agent, because I had business with them, and he had business with them.

11. You knew he had business with them to a certain extent; but do you know his authority?

A. That I know nothing about; he might have been without certain powers that I thought he had.

12. That same condition would be applicable to Mr. Dickens, would it not? You don't know of your own knowledge what his authority and power was?

A. I don't know the extent of his powers; I knew he transacted business for them, but I don't know the extent of his authority.

13. And I take it that the business Wazey did that you knew positively about was in connection with the closing up of deals for the purchase of land—that is to say, when the actual deed was being signed?

A. Yes, sir; I saw money paid over by him.

14. You knew that it was the custom of Wright-Blodgett Co., as Mr. Moss of Pugo & Moss testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; they were Mr. Kelly's instructions. He told me, that at any time he should happen to be away that if I had an abstract made and sent to Pugo & Moss and if Pugo & Moss passed on the abstract the draft would be paid. Pugo & Moss passed on all their abstracts.

15. They didn't purchase any land until Pugo & Moss approved the title?

A. That was my understanding.

16. You knew also that Dickens defaulted and left the country suddenly while in the employ of Wright-Blodgett Co.?

(Objected on the ground of irrelevancy.)

A. I don't know; I have heard that.

17. You know that they hunted for him without being able to find him?

(Objected to the ground of irrelevancy.)

A. I have heard he was hunted for; I don't know that he was.

177 18. Didn't persons from Wright-Blodgett Co. ask if you knew where he was?

A. Mr. Kelly told me he was trying to find him, but had not been able to locate him.

19. He never has been able to locate him?

A. Not to my knowledge.

20. Mr. Foster stated while on the stand that when he left the employ of Wright-Blodgett Co. he was succeeded by Mr. Livingstone. Is that correct?

A. I never had any business with Livingstone. I have heard of Livingstone being with Wright-Blodgett Co., but I don't know anything about him.

21. What I want to find out is whether Livingstone was employed before or after Foster?

A. He was employed after. I don't now [know] nothing about the employment.

22. You know, Mr. Wingate, as a timber man, do you not, that it is a custom with all large timber concerns to have an estimate of a great tract of land made by timber cruisers, as J. D. Lacy & Co., and after having an estimate made they buy on the strength of that estimate, relying on that estimate as to the statement of the amount of timber on that land?

(Objected to on the ground of irrelevancy and for the reason that the custom of other companies and the transactions of their business has nothing to do with this case.)

A. The Wright-Blodgett Co. had their own cruise. It was my understanding and my observation that the majority of large timber holders that move into a territory for the purpose of acquiring land generally have their own employes to cruise the timber and it is customary for them to cruise all the timber in the community lying contiguous and that they use this information from time to time on a basis of value.

23. They come in and cruise all the timber in that locality?

A. Yes, sir; it saves money and time.

24. All cruises are done at the same time when they come into the country?

A. Yes, sir.

#### Re-examination.

##### Mills:

1. You state that you did not know that the Stallsby case was based on homestead entry on which receiver's receipt alone had been issued?

A. I got the impression some way that that was some old claim.

2. You would not pass upon titles in these cases?

A. No, sir.

3. You state that before making purchase the Wright-Blodgett Company required an abstract and submitted it to their attorneys?

A. Yes, sir; in all the deals I closed up for Mr. Kelly it

was his instructions that I make abstract of title, or cause the same to be done; that I make draft on him through the First National Bank of Lake Charles, or the Calcasieu National Bank, and send the abstract of title to Pugo & Moss; that if Pugo & Moss found the title to be correct they would authorize the bank to honor the draft.

4. Every abstract was made in this case and examined in a case in which the title was based on a receiver's receipt the abstract would show that?

A. Yes, sir.

5. Then, if the company pursued in this case the custom which you have outlined they would know full well before they made this purchase that this title was based on a receiver's certificate.

A. The abstract would show the receiver's certificate.

6. Mr. Monroe has asked you about the disappearance and the default of Dickens and whether or not Kelly came and made inquiries about it. Who do you consider the best witness as to those facts?

A. Mr. Kelly is the best witness.

#### Recross-Examination.

Monroe:

1. Don't you remember that Mr. Kelly was not in this country, that he was out on the Pacific coast at the time of Dickens' default, and it was only a great deal later that he came down and inquired about him?

A. Yes, sir; I heard Kelly was absent at the time.

2. Then Kelly would have no personal knowledge about it?

A. No, sir.

3. Did Pugo & Moss wire you about Dickens at the time?

A. I believe they did. They notified me that he had skipped out and was no longer authorized to attend to their business.

179 In Case No. 383—Walter O. Allen.

Counsel for Wright-Blodgett Company offers patent from the U. S. government to Walter O. Allen, marked "Allen 1," the abstract of opinion of Pugo & Moss, marked "Allen 2"; and the testimony of Mr. C. D. Moss. Offering abstract and

opinion of Pugo & Moss with the right of defendant to withdraw same for filing in the J. J. Hicks and E. Z. Boyd cases.

(The filing and admission of which abstract and opinion in this case is objected to by the government for the reasons given at the time of Mr. Moss' testimony.)

Case closed by plaintiff and defendant.

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180 · (To be inserted at end of each case.)

### AGREEMENT.

It is agreed by the counsel for the government and counsel for defendant that all testimony shall be taken at the present sitting, except otherwise agreed upon; that the cases shall be argued and submitted at the May term of Court in Lake Charles, and that thereafter the Court may render judgment either in vacation or term time as best suits its convenience, it being understood that in cases of appeal either side will accept service.

It is admitted that both the government and the defendants in these cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him.

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### 181 DEMAND THAT OTHER DEFENDANT JOIN APPELLANTS IN APPEAL.

Filed June 10, 1912.

LEROY B. GULOTTA,  
Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

Leesville, La., June 8th, 1912.

W. O. Allen,  
Leesville, Louisiana.

Dear Sir:

The undersigned counsel for the Wright-Blodgett Company, Ltd., hereby demand that you shall join them in a petition of

appeal, which they propose making to the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, in the case of United States vs. W. O. Allen, and the Wright-Blodgett Co., Ltd., No. 383 of the docket of said Court seeking an appeal to the United States Circuit Court of Appeal from a decree entered by said Circuit Court in said cause on the 6th day of May, 1912.

This petition will be presented in said Court at Shreveport, Louisiana, on the 10th day of June, 1912, at eleven o'clock, and if you fail to assent to this request at that time, such failure to assent to this request will be considered as a refusal to join in said bill.

HALL, MONROE & LEMANN,  
MITCHELL & YOUNG,

Attorneys Wright-Blodgett Company, Ltd.

Exhibit "A."

Date

I, the undersigned, do hereby certify that I am personally acquainted with W. O. Allen and J. G. Palmer and that I served the original letter of which the above is a copy on the said J. G. Palmer as Atty. for W. O. Allen, by handing it to him personally, and received from him personally the attached reply, which he signed in my presence.

W. W. THOMPSON.

## 182 REFUSAL OF DEFENDANT TO JOIN IN APPEAL.

Filed June 10th, 1912.

LEROY B. GULOTTA,  
Clerk, U. S. District Court, West. Dist. of Louisiana.

Leesville, La., June 8th, 1912.

Messrs. Hall, Monroe & Lemann,  
and Mitchell & Young, Attorneys for  
Wright-Blodgett Company, Ltd.

Gentlemen:

This will acknowledge receipt of your letter of the 8th inst., addressed to Mr. W. O. Allen, apprising him of the fact that



Wherefore, the premises considered, petitioners pray that their appeal may be allowed to operate as a supersedeas, upon the giving of bond with surety, in an amount to be fixed by the Court and conditioned according to law and that a transcript of the whole record, proceedings, testimony and papers upon which said decrees were made, duly authenticated, be sent to the United States Circuit Court of Appeal for the Fifth Circuit in the manner and form and at the time prescribed by law and by the practice of this Court.

184 That citation issue to the United States of America and the said Walter O. Allen, and all other necessary parties in the manner and form prescribed by law, and that your petitioners have such further relief as may be necessary in the premises.

HALL, MONROE & LEMANN,  
Attorneys for Petitioner.

### ORDER.

Upon the filing and reading of the foregoing petition, it is ordered that the appeal and supersedeas and citation and service above prayed for, and severance and relief, be allowed upon petitioner's giving bond, according to law, with good and sufficient surety, in the sum of two thousand dollars. Let the clerk of this Court take and approve said bond.

This appeal to be returnable into said Court according to law.

ALECK BOARMAN, Judge.

In open court at Shreveport, La., June 10, 1912.

Indorsed: No. 383. In Equity. U. S. Dist. Court, West. Dist. of La. U. S. vs. W. O. Allen & Wright Blodgett Co., Ltd. Petition & Order Granting Appeal. Filed June 10, 1912. Leroy B. Gulotta, Clerk U. S. Dist. Court, West. Dist. of La.

185 Citation and service of same and further notice of said appeal waived.

E. H. RANDOLPH,  
U. S. Attorney.



ASSIGNMENT OF ERROR ON BEHALF OF THE  
WRIGHT BLODGETT CO., LTD., APPELLANTS.

In the District Court of the United States for the Western  
District of Louisiana, Fifth Circuit of the United States.

United States of America

vs. No. 363. In Equity.

Walter O. Allen and The Wright Blodgett Company, Ltd.

Now comes the Wright Blodgett Company, Ltd., appellant, and assigns the following errors committed by the Court to its prejudice in the decrees and orders herein appealed from and prays that said decrees and orders may be reversed and set aside:

1. The Court erred in declaring the patent issued to  
186 Walter O. Allen on the 5th day of July, 1902, to the  
land described in the petition null and void and ordering this appellant to surrender, deliver and return the same and restraining and enjoining the appellant from ever claiming or asserting any right, benefit, privilege or advantage whatsoever under the said patent.

2. The Court erred in finding that in purchasing land for value from the holder of a final receipt or certificate, this appellant was bound to hunt for grounds of doubt and make a searching inquiry as to the validity of his vendor's claims to the property.

3. The Court erred in failing to find that it was incumbent upon the plaintiff to prove:

1. That there was fraud in the original entryman.
2. That the Wright Blodgett Co., Ltd., had actual notice thereof at the time that it purchased the property.
4. The Court erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

"So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipt, the deeds

of the entrymen to C and the deeds of C to C1, it was as open to the officers of this government as to C1, if indeed, he knew anything about those dates, yet, they seem to have suspected nothing, and he was advised by reputable counsel that the titles were good and bought only on his advice."

5. The Court erred in failing to find that the Wright Blodgett Co., Ltd., was a purchaser in good faith for value, and without actual or other notice of the fraud, if any, in the original entrymen.

6. The Court erred in failing to find that the Wright Blodgett Co., Ltd., being a purchaser for value in good faith, without actual notice, was entitled to hold the land under its patent regardless of the fraud vel non in the original entrymen.

7. The Court erred in finding that complainant has proven in this record that there was any fraud or violation of the law in the original entrymen.

187 8. The Court erred in failing to find that Allen built on his land a good house, a stable, a hog pen, and other outhouses, dug a well, set out fruit trees and planted a crop of peas and corn, cleared the land; in failing to find that Allen was a highly reputable man and believed he was fulfilling the legal requirements, and swore that he was so doing; and in failing to find that in view of these circumstances, there was nothing to put even an inspector on notice that he had not complied with the law.

9. The Court erred in failing to discuss the bill.

Wherefore, appellant prays that these assignments of error may be maintained and that the decrees complained of may be reversed, annulled and set aside or amended with costs.

HALL, MONROE & LEMANN.

Indorsed: No. 383. In Equity. U. S. Dist. Court, West. Dist. of Louisiana. U. S. vs. W. O. Allen & Wright Blodgett Co., Ltd. Assignment of Errors. Filed June 10, 1912. Leroy B. Gulotta, Clerk U. S. Dist. Court for West. Dist. of Louisiana.

188      United States District Court,  
            Western District of Louisiana.

The United States of America  
versus  
Walter O. Allen and The Wright Blodgett Co., Ltd.

No. 383. In Equity.

Know all men by these presents, that we, The Wright-Blodgett Co., Ltd., of Saginaw, Michigan, as principals, and the United States Fidelity and Guarantee Company of Baltimore, Maryland, as surety, are held and firmly bound unto the United States of America in the full and just sum of two thousand (\$2,000.00) dollars, to be paid to the United States of America, or to any person or persons authorized to receive same, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Scaled with our seals and dated this the 10th day of June, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the District Court of the United States for the Western District of Louisiana, in a suit pending in said Court, between said United States of America and Walter O. Allen, and the Wright-Blodgett Company, Limited, a decree was entered against the said defendants, Walter O. Allen, and the Wright-Blodgett Company, Limited, the said Wright-Blodgett Company, Limited, having obtained from the said Court an order allowing an appeal and supersedeas to the United States Circuit Court of Appeals, to reverse the decree of the aforesaid suit, and a citation directed to the said United States of America to be issued, citing and admonishing the said United States of America to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana.

Now, the conditions of the above obligation is such, that if the said Wright-Blodgett Company, Limited, shall prosecute therein said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make

their plea good, then the above obligation is to be void, otherwise to remain in full force and virtue.

[Seal] THE WRIGHT-BLODGETT CO., LTD.,  
By WATTS K. LEVERICH  
THE UNITED STATES FIDELITY &  
GUARANTY CO. OF MARYLAND,  
By WM. M. FORD, Atty. in Fact.

Approved June 10, 1912.

LEROY B. GULOTTA,  
Clerk U. S. District Court, Western District of  
Louisiana.

Indorsed: No. 383. United States District Court, Western District of Louisiana. The United States of America vs. Walter O. Allen and The Wright-Blodgett Co., Ltd. Appeal Bond. \$2,000.00. The United States Fidelity & Guaranty Co. of Maryland, Surety. Filed Jun. 10, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

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CLERK'S CERTIFICATE.

United States of America.

United States District Court for the Western District of  
Louisiana.

Clerk's Office:

I, LEROY B. GULOTTA, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing 189 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had and evidence adduced in the cause entitled United States of America versus Walter O. Allen, and The Wright-Blodgett Company, Limited, No. 383 in Equity, of the docket of the United States District Court, formerly United States Circuit Court, for the Western District of Louisiana, said transcript being made in accordance with the praecipe filed by Messrs. Hall, Monroe & Lemann, solicitors for appellant.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 6th day of July, A. D. 1912.

LEROY B. GULOTTA,

[Seal] Clerk, United States District Court for the  
Western District of Louisiana.

That thereafter, the following proceedings were had in said case in the United States Circuit Court of Appeals for the fifth Circuit, viz.:

ARGUMENT AND SUBMISSION.

Extract From the Minutes of January 23d, 1913.

Wright-Blodgett Company, Limited,

versus

The United States of America.

No. 2411.

On this day this cause was called, and, after argument by Blane Monroe, Esq., for appellant, and E. H. Randolph, Jr., United States Attorney, for appellee, was submitted to Court.

## OPINION OF THE COURT.

Filed February 18, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett & Co., Ltd.,  
vs.  
The United States.  
Boyd's Case. No. 2407.

Wright-Blodgett & Co., Ltd.,  
vs.  
The United States.  
Aiken's Case. No. 2408.

Wright-Blodgett & Co., Ltd.,  
vs.  
The United States.  
Bryers' Case. No. 2409.

Wright-Blodgett & Co., Ltd.,  
vs.  
The United States.  
Hicks' Case. No. 2410.

Wright-Blodgett & Co., Ltd.,  
vs.  
The United States.  
Allen's Case. No. 2411.

Appeals From the United States District Court for the Western District of Louisiana.

Before PARDEE, Circuit Judge, and NEWMAN and GRUBB, District Judges.

By the COURT.

The above entitled and numbered cases are separate appeals from separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that

Wright, Blodgett & Company, vendees of the alleged homesteaders, are charged through their active agents on the ground with knowledge of the fraud.

The decree in each of the above mentioned cases is affirmed.

### JUDGMENT.

Extract From the Minutes of February 18, 1913.

Wright-Blodgett Company, Limited,

**versus**

No. 2411.

The United States of America.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;  
On consideration whereof, it is ordered,

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed.

### PETITION FOR REHEARING.

Filed March 8th, 1913.



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# United States Circuit Court of Appeals

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No. 2411.

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**WRIGHT-BLODGETT COMPANY, LIMITED,**  
(Allen Case)

Appellant,

versus

**UNITED STATES OF AMERICA,**  
Appellee.

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The Honorable the Judges of the United States Circuit  
Court of Appeals, Fifth Circuit:

The petition of **Wright-Blodgett Company, Limited,**  
filed herein, with respect shows:

That a rehearing should be granted in this case, for  
to-wit:

## I.

There is a fatal variance between complainant's allegations and his attempted probata. It is complainant's burden under the **Clark case, 200 U. S. 607**, to show actual fraud in the **Wright-Blodgett Company, Limited**, of

any alleged fraud. Assuming that burden, complainant in his bill charged actual notice in the Wright-Blodgett Company, Limited, through two designated agents, to-wit: Nat Wasey and James M. Boyd. Defendant came into Court to try the issue so presented, fully prepared to show that it had no notice through Nat Wasey or J. M. Boyd. Complainant, however, made no attempt whatever to prove the allegation of the bill, but attempted to show that the Wright-Blodgett Company, Limited, had received notice through other and different agents. Timely objection to this variance was made by defendants, as follows:

Transcript, page 21:

"It objects to any attempt to show knowledge in it other than through the persons and in the manner specified in the bill, on the ground that same is irrelevant and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this case." (172 Fed. 950, last ten lines.)

Transcript, pages 18 and 19:

"The bills having charged that the Wright Blodgett Company, Limited, did have knowledge of the fraud charged, through a certain individual or individuals (specifically naming them) defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy and asks that same be stricken out."

This objection should, we submit, be maintained, and any attempt to show notice by any person other than the

ones named in the bill should be excluded. If, however, the testimony as to notice through other people than Wasey and Boyd be excluded, there remains no testimony, since there was no serious attempt made to show notice through either Wasey or Boyd. That the variance above pointed out is fatal, the following cases demonstrate:

172 Fed. 948, *U. S. v. Barber Lbr. Co.*,  
9 Pet. 483, *Harrison v. Nixon*,  
10 Pet. 177, *Boone v. Chiles*.  
19 How. 303, *Briars v. Surget*.  
9 Wall. 788, *Rubber Co. v. Goodyear*,  
35 Fed. 455, *Phelps v. Elliott*,  
*Boston R. R. Co. v. Parr*, 104 Fed., 695.  
107 Fed. 972, *Kennedy v. Custer*,  
167 Fed. 770, *McKinney v. Big Horn Basin Co.*

## II.

The complainant's bill charges actual notice of the alleged fraud in the Wright-Blodgett Company, through Nat Wasey and J. M. Boyd, naming them by name. There is not even an attempt made in this record by the complainant to prove this allegation. Without proof of this allegation complainant cannot prevail.

## III.

The complainant's bill charges actual notice of the alleged frauds in the Wright-Blodgett Company. The burden of proof was upon the complainant to prove this

charge. We submit that in the case at bar it has not done so.

**Wherefore**, Petitioner prays that a rehearing may be granted herein. And for general relief.

J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHELL,  
Solicitors for Petitioner.

I, **J. Blanc Monroe**, do hereby certify that I have carefully read the foregoing petition for rehearing and that in my judgment same is well founded.

New Orleans, La., March. *A*. 1913.

..... J. Blanc Monroe

## ORDER DENYING REHEARING.

Extract From the Minutes of March 18, 1913.

Wright-Blodgett Company, Limited,

versus

United States of America.

No. 2411.

Ordered that the petition for rehearing filed in this cause, be, and the same is hereby denied.

## PETITION FOR APPEAL, AND ORDER.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett Company, Limited,

(Allen Case)

Appellant.

vs.

No. 2411.

The United States of America,

Appellee.

To the Honorable the Judges of the United States Circuit Court of Appeals, Fifth Circuit:

Now, comes the Wright-Blodgett Company, Limited, by its undersigned solicitors, and complains that in the record and proceedings, and also in the rendition of the decree of the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, in the above styled and numbered cause, on the 18 day of February, 1913, which decree was made final by rehearing being denied on the 18 day of March, 1913, and which decree affirmed the decree of the United States Circuit (now District) Court, for the Western District of Louisiana, in said cause, manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the Circuit Court of the United States for the Western District of Louisiana depended upon the fact that the suit was brought by the United States of America and arose under the public land laws of the

United States, the defendant, appellant, relying for its defense upon said laws and the construction heretofore placed upon them by the Supreme Court of the United States; that the amount involved therein and the matter in controversy exceeds the sum of one thousand dollars (\$1000.00), besides costs, and that this is not a case in which the jurisdiction of the Circuit Court of Appeal is made final.

Wherefore, petitioner prays for an allowance of the appeal, to the end that the cause may be carried to the Supreme Court of the United States. And petitioner prays for a supersedeas of said judgment and such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

(Signed) WRIGHT-BLODGETT CO., LTD.,

(Signed) J. BLANC MONROE,

(Signed) MONTE M. LEMANN,

Solicitors.

Service accepted and citation waived.

(Signed) E. H. RANDOLPH,

U. S. Atty.

March 24, 1913.

#### ORDER.

Appeal and supersedeas allowed and bond fixed in the sum of \$500, conditioned as the law directs.

This, the 25th day of March, 1913.

(Signed) DON A. PARDEE, Judge.

## ASSIGNMENT OF ERRORS.

Filed March 25th, 1913.

United States Circuit Court of Appeals.

Wright-Blodgett Company, Limited,

(Allen Case)

vs.

The United States of America,

Appellant.

No. 2411.

Appellee.

## ASSIGNMENT OF ERRORS.

The Wright-Blodgett Company, Limited, appellant, by its undersigned solicitor, in connection with its petition for appeal herein, presents this, its assignment of errors, and says:

That the decree made and entered on the 15th day of February, 1913, by the Circuit Court of Appeals of the United States, for the Fifth Circuit, in the case styled Wright-Blodgett Company, Limited, Appellant, vs. The United States of America, Appellee, No. 2411 of the docket of said Court, is erroneous, and against its just rights, in the following particulars, to-wit:

(1) The Circuit Court of Appeals erred in declaring the patent issued by the United States to Walter O. Allen on July 5, 1902, to the land described in the bill of complaint, null and void, and in ordering this appellant to surrender, deliver and return same, and in restraining and enjoining this appellant from ever claiming or asserting any right, benefit, privilege, or advantage whatsoever under said patent.

(2) The Circuit Court of Appeals erred in finding that any fraud in the homestead entry has been proven by the complainant.

(3) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Company, Limited, were charged, through their active agents on the ground, with knowledge of fraud in the homestead entry.



(4) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated by this Court in the Maxwell Land Grant Case, where the Court said:

"We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt."

(5) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

"So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipts, the deeds of the entryman to C and the deeds of C to C1, it was as open to the officers of the Government as to C1, if indeed he knew anything about those dates. Yet they seem to have suspected nothing and he was advised by reputable counsel that the titles were good and bought only on his advice."

(6) The Circuit Court of Appeals erred in failing to disregard and eliminate all evidence of notice of fraud in the Wright-Blodgett Company, Ltd., through agents other than J. M. Boyd and Nat Wasey. The bill designated these two men as the persons through whom the actual notice of the alleged fraud had been received, and the Wright-Blodgett Company, Ltd., made timely objection to any evidence seeking to show notice otherwise than through them.

(7) The Circuit Court of Appeals erred in failing to find that a fatal variance between complainant's allegata and attempted probata.

(8) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Co., Ltd., was charged with notice of facts known to Nat Wasey or J. M. Boyd, or any one else, until it was proven that such persons were the agents of the Wright-

gett Company, Ltd., and that such facts related to matters in the scope of their authority.

9) The Circuit Court of Appeals erred in failing to find that the entryman and his witnesses swore that they had complied with the law and that the entryman left on the land a house, a stable, a hog-pen and other outhouses, a well, fruit trees, a clearing of over an acre, and evidences of cultivation thereof; and in failing to find that these mute and silent evidences of compliance with the law were sufficient to deceive a vendee.

10) The Circuit Court of Appeals erred in finding that land officials of the United States were deceived by the entryman and the evidences of compliance with the law left the entryman upon the land, and in failing to find that the Light-Blodgett Co., Ltd., which was confronted with the same statements and same evidences, were not similarly deceived.

11) The Circuit Court of Appeals erred in failing to dismiss the bill.

Wherefore, appellant prays that the decree herein commenced of may in these respects be reversed and corrected, and that appellant may have an adjudication and decree in his favor, in accordance with law and equity, as herein specified.

(Signed) J. BLANC MONROE,

(Signed) MONTE M. LEMANN,

(Signed) A. R. MITCHEL,

By J. B. M.

Solicitors for Appellant.

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## APPEAL BOND.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett Company, Limited,

(Allen Case)

vs.

Appellant,

No. 2411.

The United States of America.

Appellee.

Know All Men By These Presents: That we, the Wright-Blodgett Company, Limited, as principal, and the United States Fidelity & Guaranty Company of Maryland as sureties, acknowledge ourselves to be jointly indebted unto the United States of America, and Walter O. Allen, appellee in the above cause, in the sum of five hundred 00/100 dollars, conditioned that whereas on the 18 day of February, 1913, in the Circuit Court of Appeals of the United States, for the Fifth Circuit, in a suit depending in that Court, wherein the United States of America was plaintiff, appellee, and the Wright-Blodgett Company, Limited, was appellant, numbered on the docket of that Court, as above, a decree was rendered against the said Wright-Blodgett Company, Limited, and the said Wright-Blodgett Co., Ltd., having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the Clerk of Court, to reverse the said decree, and a citation directed to the said United States of America, and the said Walter O. Allen, citing and admonishing each of them to be and appear at a session of the Supreme Court of the United States, to be holden in the City of Washington, in the District of Columbia, on the 24 day of April next.

Now, if the said Wright-Blodgett Company, Limited, shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) WRIGHT-BLODGETT CO., LTD.,

(Signed) UNITED STATES FIDELITY &  
GUARANTY CO.,

By (Signed) WILLIAM H. KLINE SMITH,

Its Attorney in Fact.

Approved.

(Signed) DON A. PARDEE, Judge.

## CLERK'S CERTIFICATE.

United States of America.

United States Circuit Court of Appeals, Fifth Circuit.

I, FRANK H. MORTIMER, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 169 to 181 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2411, wherein Wright-Blodgett Company, Limited, is appellant, and the United States of America is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 168 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 11th day of April, A. D. 1913.

[Seal]

FRANK H. MORTIMER,

Clerk of the United States Circuit Court of Appeals.

No. 2411.

United States Circuit Court of Appeals, Fifth Circuit.

WRIGHT-BLODGETT COMPANY, LIMITED, Appellant,  
(Allen Case)

vs.

THE UNITED STATES OF AMERICA, Appellee.

UNITED STATES OF AMERICA:

The President of the United States to W. O. Allen, Greeting:

You are hereby notified that in a certain case in equity in the United States Circuit Court of Appeals, in and for the Fifth Circuit, wherein the United States of America is Complainant, and the Wright-Blodgett Company, Limited and yourself are defendant-, an appeal has been allowed the Wright-Blodgett Company, Limited, therein, to the Supreme Court of the United States. You are hereby cited and admonished to be and appear in said Court at Washington, D. C., within thirty days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 25th day of March, 1913.

DON A. PARDEE,

*Circuit Judge.*

STATE OF LOUISIANA,

*Parish of Vernon:*

On this, the 2nd day of April, A. D., 1913, personally appeared before the undersigned authority, W. W. Thompson, who being duly sworn, deposes and says:

That he delivered a copy of the within citation to Walter O. Allen on the 2nd day of April, 1913, at Leesville, Louisiana, by handing same to said person in person.

W. W. THOMPSON.

Sworn to before me this 2nd day of April, 1913.

[Seal H. H. Pye, Notary Public, Vernon Parish, La.]

H. H. PYE,

*Notary Public, Vernon Parish, La.*

[Endorsed:] No. 2411. In the United States Circuit Court of Appeals, Fifth Circuit. Wright-Blodgett Company, Ltd., versus United States of America. Citation of Appeal, to Walter O. Allen, and Marshal's Return. U. S. Circuit Court of Appeals. Filed Apr. 4, 1913. Frank H. Mortimer, clerk.

Endorsed on cover: File No. 23,645. U. S. Circuit Court Appeals, 5th Circuit. Term No. 1070. Wright-Blodgett Company, Limited, appellant, vs. The United States. Filed April 19th, 1913. File No. 23,645.

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 154. 154

WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

vs.

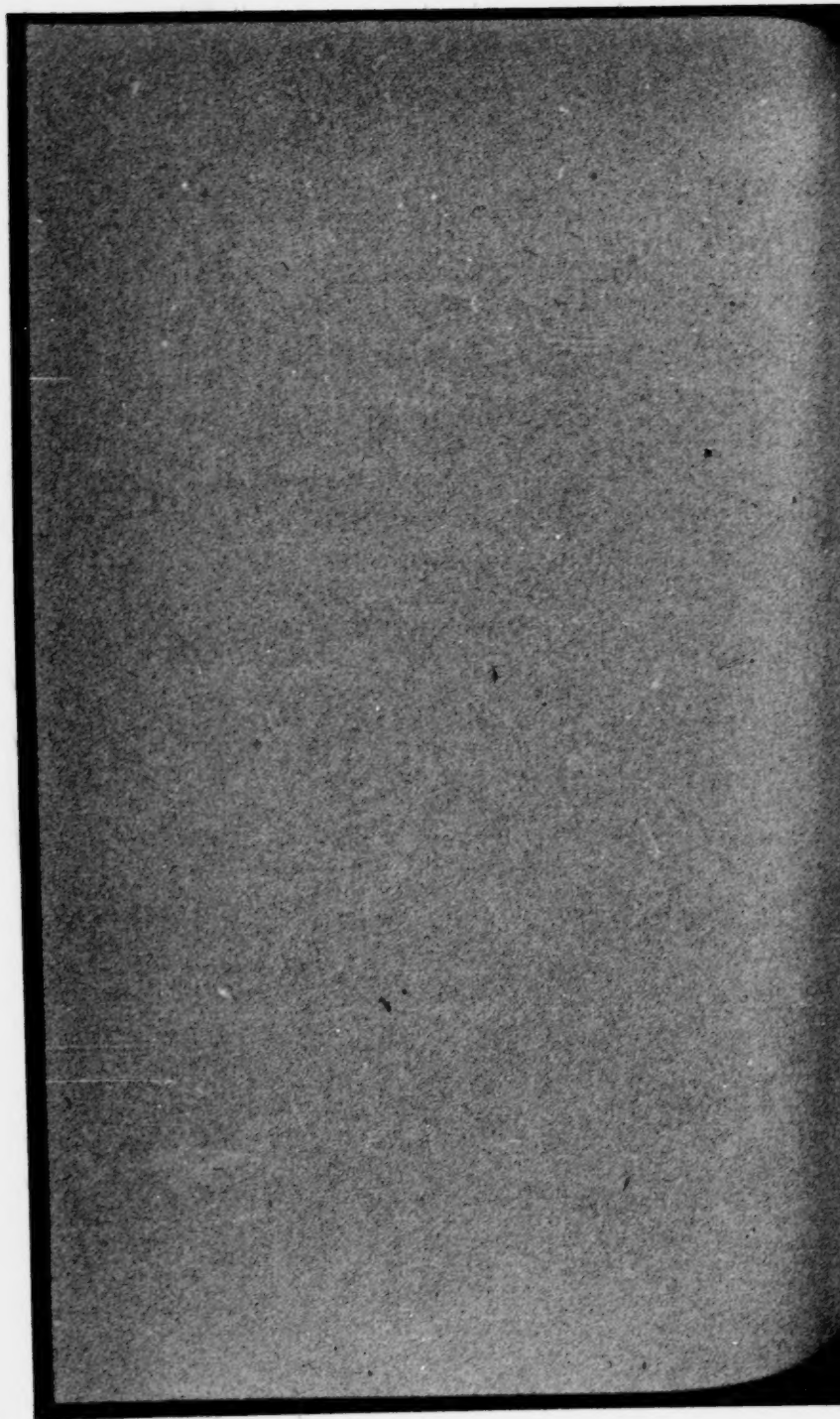
THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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FILED APRIL 22, 1913.

(23,651)



(23,651)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1076.

WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA.

United States Circuit Court of Appeals, Fifth Judicial Circuit.

PLEAS AND PROCEEDINGS had and done at a regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Thursday, November 21st, A. D., 1912, at New Orleans, Louisiana, before the Honorable Don A. Pardee, Circuit Judge, and the Honorable William T. Newman and the Honorable William I. Grubb, District Judges.

WRIGHT-BLODGETT COMPANY, LIMITED,

Appellant,

versus

THE UNITED STATES OF AMERICA,

Appellee.

BE IT REMEMBERED, That heretofore, to-wit, on the 3rd day of August, A. D. 1912, a Transcript of the Record of the above styled cause, pursuant to an Appeal from the District Court of the United States for the Western District of Louisiana, was filed in the Office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said Transcript was filed and docketed in said Circuit Court of Appeals as No. 2407, as Follows:



TRANSCRIPT.

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA

versus No. 364. In Equity.

E. Z. BOYD AND

THE WRIGHT-BLODGETT COMPANY, LIMITED.

Appealed from the United States District Court for the  
Western District of Louisiana, to the United States  
Circuit Court of Appeals, for the Fifth Circuit.

Hon. E. H. Randolph, United States Attorney; Hon. Lowell  
C. Butler, Asst. U. S. Attorney, Solicitors for Com-  
plainant, Appellee.

Messrs. Hall, Monroe & Lemann, Messrs. Mitchell & Young,  
Solicitors for The Wright-Blodgett Company, Limited,  
Defendant, Appellant.

In the Circuit Court of the United States for the Fifth  
Circuit and Western District of Louisiana.

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The United States of America, Complainant,  
vs. No. 364. In Equity.  
Elijah Z. Boyd and the Wright-Blodgett Company, Defendants.

To the Honorable Judges of the Circuit Court of the United  
States for the Fifth Circuit and Western District of  
Louisiana, in Equity:

William H. Moody, attorney general of the United States for and in behalf of the United States of America, files this bill of complaint against Elijah Z. Boyd, a citizen of and residing within the Parish of Vernon in the State of Louisiana, and of the Western District of Louisiana, and the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, defendants herein, and thereupon your orator complains and says:

First. That the said defendant, Elijah Z. Boyd, on the 13th day of January, 1900, under and by virtue of the provisions of Sections 2289 and 2290 of the Revised Statutes of the United States, filed in the local land office of the United States at Natchitoches in the State of Louisiana, his Application No. 8210, to enter the following described land, to-wit, south half of southwest quarter of Section Fourteen, Township Two, Range Five, West, La. Meridian, containing eighty-one & 25/100 acres in the Parish of Vernon, Louisiana.

Second. That at the time of the filing by the said defendant, Elijah Z. Boyd, to enter the said aforementioned lands and premises, and contemporaneously therewith, the said defendant likewise filed in the said local land office of the said United States, as required by law, his affidavit and statement in writing, under oath, in which, among other matters and things he stated and deposed that his said application to enter said lands as a homestead was honestly and in good faith made for the purpose of actual settlement and cultivation, and that he, said defendant, would faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to said

5 lands applied for, and that he had not and did not apply to enter said lands for the purpose of speculation, but in good faith to acquire a home for himself. That, thereupon, the said defendant then and there paid to the receiver of the said land office of the said United States at Natchitoches, Louisiana, the sum of fourteen & 06/100 dollars, the same being the proper and legal fee then and there due and payable to said receiver upon the filing of his said application by said defendant, and upon said payment having been made, as aforesaid, a receipt was then and there issued and delivered by the said receiver to said defendant for said amount so paid by him, as aforesaid, and attached to and connected with said receipt a notation, setting forth in detail the requirements of the law to be observed and complied with by the said defendant in order to obtain title to said lands so applied for to be entered by him as follows, to-wit:

“Note: It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the five years he must file proof of his actual residence and cultivation, failing to do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to the time of payment.

Third. That thereupon, in order to entitle the said defendant to obtain and procure from the United States a patent for said tract of land under the homestead laws of the United States, it was incumbent on said defendant and he was required to make actual settlement on said lands, and reside thereon and cultivate the same for a period of five years from and after the date of the filing of his said application and affidavit hereinbefore mentioned and referred to, or in case said defendant did not desire to remain upon said lands the full period of five years, to make payment for said lands at the expiration of fourteen months from and after the filing of his said application and affidavit, upon making proof before the register and



receiver of the said local land office at Natchitoches, Louisiana, of settlement upon and cultivation of said lands by said defendant from the date of the filing of said application and affidavit down to the time of making such payment. That for the purpose of availing himself of the privilege, afforded by the law in such cases made and provided, to purchase the lands after the expiration of fourteen months from and after the filing

by him of his application and affidavit on the 18th  
 6 day of May, 1901, appeared before James M. Boyd, then and there a United States commissioner, at Ziegler, in the Parish of Vernon, Louisiana, due notice having been given thereof as required by law, with his witnesses, Richard Henderson and Rus Bond, and offered proof before the said James M. Boyd, United States commissioner as aforesaid, that he had settled upon said lands and premises and actually resided thereon and cultivated the same as required by law, and within the meaning of the homestead laws of the United States, then and there gave, made out and signed his deposition, and swore to the same before the said James M. Boyd, United States commissioner, as aforesaid, and soon thereafter, to-wit, on the 24 day of May, 1901, filed and caused to be filed the said deposition and sworn statement in the United States local land office at Natchitoches, Louisiana, the said land office being then and there the proper United States land office of the land district wherein said lands are situated, and then and there offered, presented, and filed the said deposition and sworn statement, so made, signed and sworn to by him, the said Elijah Z. Boyd, defendant, to and with the register and receiver of the said United States land office, as proof of the settlement and residence upon, and the cultivation of the said lands and premises by the said defendant, as required by law, and the statutes in such cases made and provided, and the same was accepted by the said register and receiver of the said land office.

Fourth. And your orator sheweth unto your Honors, that the said defendant, Elijah Z. Boyd, in said deposition and sworn statement, made, signed and sworn to as aforesaid, and offered, presented, delivered to and filed with the register and receiver, and accepted by them as proof of the settlement and residence of said defendant upon said lands, and of the cultivation of the same by him, the said defendant, among other matters and

things testified and deposed that he established his residence upon said lands on the 14th day of January, 1900, and had resided on said lands continuously since said date, and had not been absent at all, and that he had resided continuously since said date, and that he had cleared about two acres of said land, and had cultivated the same same for one season. That the said defendant procured from each of said witnesses, Richards, Henderson and Rus Bond, a like deposition and sworn statement, taken before the said James M. Boyd, United States

7 commissioner as aforesaid, on the 18th day of May, 1901, the same in effect as, and corroborative and in aid of the said deposition and sworn statement made, signed and sworn to by him, the said defendant, and filed the same with defendant's own deposition and statement in the local land office of the said United States at Natchitoches, Louisiana, as proof of the settlement and residence upon and the cultivation of said lands by the said defendant, as required by law, and all of said depositions, testimony and sworn statements of the said defendant and his said witnesses, so made, signed and sworn to as aforesaid, were, and each of them was, then and there, taken and accepted by the said register and receiver of said land office as proof of the settlement and residence of the said defendant upon, and the cultivation by him of the said lands and premises. That, thereupon, on the 24th day of May, 1901, the said defendant paid to the receiver of the United States land office at Natchitoches, Louisiana, the sum of two hundred and three & 13/100 dollars, being payment for said lands at the rate of two & 50/100 dollars per acre for said lands, and thereupon the said receiver, then and there, issued to said defendant his final receipt, No. 21206, for the said moneys so paid to him by the said defendant in payment for said lands, as aforesaid, and the register of said land office, likewise, then and there issued to said defendant his certificate No. 21206 for said lands, certifying that in pursuance of law, the said defendant had purchased said lands and that upon presentation of said certificate to the commissioner of the general land office, the said defendant should be entitled to receive a patent for said tract of land hereinbefore more particularly set forth and described. That thereafter such proceedings were had that on the 15th day of February, 1902, a patent was issued to said defendant, Elijah Z. Boyd, for said

lands, which said patent was duly delivered to said defendant and received by him.

Fifth. And your orator further showeth unto your Honors that the said acceptance of the said depositions and testimony of the said defendant, Elijah Z. Boyd, and of his said witnesses, Richard Henderson and Rus Bond, as proof of the settlement and residence of said defendant upon said lands and the cultivation of the same by him, as required by law, by the said register and receiver, and the issuance of the said final receipt, and the issuance of said certificate of purchase by the said register, as hereinbefore mentioned and set forth, and the issuance of said patent for said tract of land by the United States were done by the said officers of the said land office and the officers of your orator, the United States, in reliance, by them, and each of them, upon the truth of the testimony and statements contained in said deposition of the  
 8        said defendant, Elijah Z. Boyd, and in reliance, by them, and each of them, upon the truth of the testimony and statements contained in the depositions of said witnesses Richard Henderson and Rus Bond, and in reliance upon the good faith of the said defendant and his said witnesses, and not otherwise.

Sixth. That the said deposition of the said defendant, Elijah Z. Boyd, and the depositions of his said witnesses were, and each of them was, then and there, false and fraudulent, as was then and there well known to the said defendant and each of his said witnesses, and made with the intent to deceive the officers of the United States, and with the intent to fraudulently obtain patent to the said lands hereinbefore described, and by fraud and deceit to procure a patent for the lands, by means of false and fraudulent testimony and statements made and contained in said depositions and testimony, in this, to-wit, that the said defendant had not and did not establish his actual residence upon said lands, or any part or portion thereof on the 14th day of January, 1900, or at any time or at all, and that the said defendant had not, at the time of making his said proof, and filing the same in the said land office, resided on said lands, or any portion thereof, continuously or in any other manner, or at all, since the 14th day of January, 1900, or at any other time, or at all, and had not then, or at any other

time, cleared about two acres of said lands, or any other amount of said lands, and did not then, or at any other time, have about two acres of said land, or any other amount of said lands in cultivation for one season. But your orator alleges the facts to be that the said defendant never did make a settlement upon said lands, or any part thereof, and never did establish his residence on said lands, or any part thereof, and never cultivated any part or portion thereof, and each and every of the statements so made by the said defendant, and his said witnesses, as hereinbefore specially mentioned and set forth, which are contained in said depositions and testimony to prove settlement and residence by said defendant upon said lands, and the cultivation by him of the same, as required by the homestead laws of the United States, are utterly false, fraudulent and untrue in every particular, as he, the said defendant, Elijah Z. Boyd, then and there well knew.

Seventh. And your orator charges and alleges that the testimony of the said defendant, Elijah Z. Boyd, as contained in his said deposition, and the testimony of his said witnesses, Richard Henderson and Rus Bond, as contained in said depositions made by them as aforesaid, was false, fraudulent and untrue in the respects and in the several particulars as hereinbefore set forth, and the same was made, offered and filed as proof of the settlement and residence of the said defendant upon said lands, and the cultivation of the same as aforesaid, for the false and fraudulent purpose of imposing upon and deceiving the register and receiver of the said United States land office at Natchitoches, Louisiana, and to cause and induce the said officers and agents of your orator to believe that the statements and testimony contained in said depositions were true, and that the said defendant, Elijah Z. Boyd, had in fact made and established a settlement and resided upon said tract of land, and had cultivated the same, as by law required, and for the purpose of obtaining and procuring by means of fraud and deceit the issuance to said defendant a patent hereinbefore mentioned.

Eight. And your orator further sheweth unto your Honors that the said defendant, Elijah Z. Boyd, by means of the said false and fraudulent depositions, and false and fraudulent statements and testimony contained therein, given under the

sanction of an oath of the said defendant and his said witnesses, imposed upon and deceived the said officers and agents of the United States, and caused and induced the said officers to believe that the testimony and statements contained in said depositions were true, and that the said defendant had actually settled and resided upon said lands, and cultivated the same in the manner and to the extent as stated in said depositions, and the officers of your orator, the United States, supposing and believing that the testimony and statements contained in said depositions of said defendant, and his said witnesses to be true, and relying upon the truth of said testimony and statements, so falsely and fraudulently given and made by said defendant and his said witnesses, as aforesaid, and believing and supposing upon the strength of said depositions and testimony that the said defendant had actually made settlement and established his residence upon said tract of land, and had cultivated the same, in the manner and to the extent and during the period of time as therein stated by the said defendant and his said witnesses, were wholly deceived and misled into allowing said proof to be filed and accepted, and in permitting the issuance of said final receipt and the issuance of said certificate of purchase of said land, and of the United States patent therefor by the said officers of the said United States as hereinbefore set forth, and delivering the said patent to the said defendant.

Ninth. And your orator further sheweth unto your Honors, that the existence of the said patent, so fraudulently obtained and procured by the said defendant, Elijah  
 10       Z. Boyd, as aforesaid, on its face entitles the said defendant to exercise the right of absolute ownership of and over the said lands hereinbefore mentioned and described, and assert a title to the same, to which the said defendant is not entitled. That if the said patent remains uncanceled and in force, it can be used in fraud of your orator and all persons relying thereon, as a valid and subsisting conveyance of the legal title to said lands and premises above described, all of which acts and doings are contrary to equity and good conscience, and done to the manifest injury of your orator.

Tenth. And your orator further sheweth unto your Honors, that the Wright-Blodgett Company, a corporation or-

ganized under the laws of the State of Michigan, and having its domicile and place of business in the City of Saginaw, Michigan, is now asserting title to the said lands, so falsely and fraudulently obtained and procured to be patented by the United States to the said defendant Elijah Z. Boyd; that said company is asserting title to said lands by reason of an act of sale from the said defendant, Elijah Z. Boyd, to the said Wright-Blodgett Company, of date June 21, 1901, and recorded in the clerk's office of the Parish of Vernon, at Leesville, Louisiana. Your orator avers and charges that at the time of making said sale, or pretended sale, to the said Wright-Blodgett Company, aforesaid, the said defendant, Elijah Z. Boyd, had no title, either real or apparent, to the lands sought to be conveyed by said act of sale hereinbefore referred to; that said act of sale was made to the said Wright-Blodgett Company, as aforesaid, more than seven months before the issuance to him by the said United States of the patent to said lands, and that, therefore, the said lands at the time of said pretended sale, made as aforesaid, were not the lands of the said defendant, Elijah Z. Boyd, but were the lands of the United States. And your orator further showeth unto your Honors that the subsequent issuance of said patent for said lands to the defendant, Elijah Z. Boyd, could not and did not inure to the benefit of the said Wright-Blodgett Company by reason of said pretended act of sale, for the reason that said patent was so obtained, as hereinbefore in this bill set forth, by the false and fraudulent methods therein described and charged. Your orator further charges and avers that at the time of said pretended act of sale by the said defendant, Elijah Z. Boyd, to the said Wright-Blodgett Company aforesaid, and prior thereto, and up to and including the dates of making said false and fraudulent proof of residence and cultivation of said lands by the said defendant, Elijah Z. Boyd, and his said

11 witnesses, and of the issuance of said certificate of purchase, and of the issuance of said patent, the said

Nat Wasey was the agent of the said Wright-Blodgett Company, and entrusted by said company in the investigation, solicitation and purchase of lands for their use and benefit, and that the said Wright-Blodgett Company, by and through its agent, Nat Wasey, was well advised of and knew each and every detail of the acts and things done and committed, as hereinbefore set forth and described, by the said

defendant, Elijah Z. Boyd, and his said witnesses, for the unlawful and inequitable purpose of obtaining by such false and fraudulent methods the issuance of said patent; and your orator avers and charges that the said Wright-Blodgett Company, so well knowing and being advised of said false and fraudulent acts and doings on the part of the said defendant, Elijah Z. Boyd, and his said witnesses, did, through its officers, whose names are to your orator unknown, and therefore not herein given and set forth, aid, assist, advise and encourage the commission of each and every of said acts and things, with the fraudulent purpose of obtaining title to the said lands hereinbefore described. For these reasons your orator avers that the said act of sale, as hereinbefore set forth, from the said defendant, Elijah Z. Boyd, to the said Wright-Blodgett Company should be cancelled, annulled, set aside and held for naught by the decree of your Honors as contrary to equity and good conscience, and to the manifest injury of your orator.

For as much as your orator can have no adequate relief except in this Court, and to this end, therefore, that defendants, and each of them, may if he can, show why your orator should not have the relief hereby prayed, and make a full disclosure and discovery of the matters aforesaid, and according to the best of his knowledge, remembrance, information and belief, true, direct and perfect answer make, each of them, to the matters herein stated and charged, but not under oath, and answer under oath being hereby expressly waived.

And your orator further prays that a decree be entered, declaring null and void the said patent to the said defendant, Elijah Z. Boyd, for said lands and premises, and requiring, directing and compelling said defendant, Elijah Z. Boyd, to surrender, deliver up, and return the said patent to your orator, and that he be forever and perpetually restrained and enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said patent, and your orator prays that the act of sale from the said defendant, Elijah Z. Boyd, to the said Wright-Blodgett Company be declared null and void and of no effect, and that the said Wright-Blodgett

Company be forever and perpetually restrained and  
 12 enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said act of sale, and that defendants, and each of them, be held to pay into the treasury of your orator all such reasonable sums



of money as it may be found necessary to lay out and expend in and about discovering the fraud, so as hereinbefore set forth, and charged, and that your orator may have all such further relief in the premises as may be conformable to equity and good conscience, and as such seem proper to this Honorable Court.

May it please your Honors to grant unto your orator a writ of subpoena of the United States of America, issued out of and under the seal of this Court, directed to the said defendants, Elijah Z. Boyd, and the Wright-Blodgett Company, through its proper officers, commanding them, and each of them, on a day certain to appear and answer to this bill of complaint, and to abide and perform such orders and decree in the premises as the Court shall proper and required by the principles of equity and good conscience.

WILLIAM H. MOODY,  
Attorney General of the United States.  
MILTON C. ELSTNER,  
United States Attorney, Western District  
of Louisiana.

United States of America,  
Western District of Louisiana.

Milton C. Elstner, being first duly sworn, deposes and says, that he is the regularly appointed, qualified and acting United States attorney for the Western District of Louisiana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and facts therein stated and alleged are true to the best of his knowledge, information and belief.

M. C. ELSTNER.

Subscribed and sworn to before me, this 7th day of September, 1906.

W. JACKSON,  
Clerk of the U. S. Circuit Court, 5th Circuit,  
Western District of La.

Indorsed: No. 364. The United States vs. Elijah Z. Boyd, et al. Bill of Complaint. Filed Sept. 7th, 1906. W. Jackson, Clerk.



13

United States of America.

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States.

To the Marshal for the Western District of Louisiana—  
Greeting:

You are hereby commanded to summon Elijah Z. Boyd, a citizen of and residing within the Parish of Vernon, State of Louisiana, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the third Monday of December, 1906, then and there to answer a bill in chancery, filed against him, wherein The United States of America is complainant, and said Elijah Z. Boyd and the Wright-Blodgett Company are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 17 day of September, in the year of our Lord one thousand nine hundred and six, and the 130 year of American Independence.

[Seal]

W. JACKSON, Clerk.

The defendant, Elijah Z. Boyd, is hereby notified that he is required to enter his appearance in the clerk's office of the United States Circuit Court, at Lake Charles, on or before the first Monday of November, 1906, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: The United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 364. The United States of America vs. Elijah Z. Boyd, et al.

Marshal's Return.

Marshal's Docket No. 456, Sept. 17, 1906.

I received in office at Alexandria, La., on the 19th day of

Sept., 1906, for the within-named Elijah Z. Boyd, and on the 24th day of same month & year I made service by delivering into the hands of Elijah Z. Boyd personally a certified copy of the within subpoena in chancery.

N. S. STEWART,  
Dy. Marshal.

Filed Sept. 27, 1906.

W. JACKSON, Clerk.

14

United States of America.

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States.

To the Marshal for the Western District of Louisiana—  
Greeting:

You are hereby commanded to summon Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile at Saginaw, Michigan, and represented by A. P. Pujo, agent, at Lake Charles, Louisiana, designated with the secretary of state at Baton Rouge, Louisiana, by the defendant company, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the third Monday of December, 1906, then and there to answer a bill in chancery, filed against it, wherein The United States of America is complainant, and said Elijah Z. Boyd and the Wright-Blodgett Company are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 17 day of September, in the year of our Lord one thousand nine hundred and six, and the 130 year of American Independence.

[Seal]

W. JACKSON, Clerk.

The defendant, Wright-Blodgett Co., is hereby notified that it is required to enter its appearance in the clerk's office of the United States Circuit Court, at Lake Charles, on or before the first Monday of November, 1906, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 364. The United States of America vs. Elijah Z. Boyd, et al.

#### Marshal's Return.

Marshal's Docket No. 456, Sept. 17, 1906.

Received the within writ Sept. 17, 1906, from W. Jackson, clerk U. S. Court, and on Sept. 20, 1906, I served a certified copy of the within writ on the within-named Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile at Saginaw, Michigan, and being represented by A. P. Pugo of Lake Charles, Louisiana, as agent and as designated with John T. Michel, secretary of State of Louisiana at Baton Rouge, La., declared by the defendant Co. Said service was made in person by delivering said certified copies hereof into the hands of said A. P. Pugo in his office in Lake Charles, Louisiana, and said A. P. Pugo being to me personal known and accepts service hereof as agent for the deft. co.

B. F. O'NEAL,  
U. S. Marshal.

By HENRY O'NEAL,  
Dy. U. S. Marshal.

Filed Sept. 24, 1906.

W. JACKSON, Clerk.

15 In the Circuit Court of the United States for the  
Western District of Louisiana.

United States

vs.

No. 364. In Equity.

E. Z. Boyd, and Wright-Blodgett Co.

To the Clerk of Said Court:

Now comes E. Z. Boyd, one of the defendant in the above entitled proceeding, and makes his appearance herein, as required by the equity rules of practice.

Now come Sompayrac & Toomer, who appear as attorneys for said E. Z. Boyd.

PAUL A. SOMPAYRAC, &  
J. SHELDON TOOMER,

Attorneys for E. Z. Boyd.

Indorsed: No. 364. In the Circuit Court of United States for Western District of Louisiana. United States vs. E. Z. Boyd. Appearance of E. Z. Boyd. Filed Dec. 17, 1906. W. E. Cline, Dy. Clerk.

16 In the Circuit Court of the United States for the  
Western District of Louisiana.

United States

vs.

No. 364. In Equity.

E. Z. Boyd, et als.

Now comes Wright-Blodgett-Company, Limited, herein made defendant as Wright-Blodgett Company, in the above entitled proceeding, and, through undersigned counsel, enters its appearance herein as required by the rules of equity practice.

MITCHELL & YOUNG,

Attys. for Defendant.

Indorsed: No. 364. In the Circuit Court of the United States for the Western District of Louisiana. United States vs. E. Z. Boyd, et als. Appearance of Wright-Blodgett Co., Ltd. Filed Dec. 17, 1906. W. E. Cline, Dy. Clerk.

17            In the Circuit Court of the United States for the  
                  Fifth Circuit and Western District of Louisiana.

The United States of America, Complainant,  
    vs.            No. 364. In Equity.  
 Elijah Z. Boyd, and the Wright-Blodgett Company,  
    Defendants.

The answer of Elijah Z. Boyd, one of the above-named defendants, to the bill of complaint of the above-named plaintiff, is set as follows:

The said defendant, Elijah Z. Boyd, admits that he filed his application with the local land office of the United States at Natchitoches, in the State of Louisiana, to enter the land described in plaintiff's bill of complaint.

He admits that he filed in the said land office, as required by law, his affidavit and statement in writing and deposed that said application was to enter said lands as a homestead and that he would faithfully and honestly endeavor to comply with the requirements of the law with relation thereto.

He admits that he paid the receiver of said land office of the United States at Natchitoches, Louisiana, the sum of fourteen and 6/100 (\$14.06) dollars, the proper and legal fee, and for which a receipt was then and there issued to said defendant for the amount so paid, as aforesaid, all as provided by law.

Defendant admits that he paid the price to avail himself of the privilege afforded by law and providing for the purchase of lands after the expiration of fourteen months from and after the filing of his said application and affidavit, and that on the 8th day of May, 1901, he appeared before James M. Boyd, a United States commissioner at Sigler, in the Parish of Vernon, Louisiana, due notice having been given as required by law, with his said witnesses, Richard Henderson and Russ Bond, and made proof before the said James M. Boyd, United States commissioner, as aforesaid; that he had settled upon said lands and premises and actually resided thereon and cultivated the same, as required by and within the meaning of the homestead laws of the United States, and then and there made and signed his deposition and swore to the same before James M. Boyd, United States commissioner, and on the 24 day of May, 1901, he filed and caused to be filed the said depo-

sition and sworn statement in the United States land office, as proof of settlement and residence and cultivation of said land and premises, as required by law.

Now, your defendant admits making proof, as alleged in bill of complaint, and that thereafter, on the 15th day of January, 1902, a patent was issued to Elijah Z. Boyd, which said patent was duly delivered to your defendant.

Now, your defendant denies that the deposition made by him, and the depositions made by his aforesaid witnesses, were false and fraudulent, or that it was known to defendant, or either of said witnesses, that the same were false and fraudulent, and he denies that he or his witnesses made the same with the intent to deceive the officers of the United States, and with the intent to practice fraud in order to obtain a patent to the lands described in the bill of complaint, and he denies that by fraud and deceit he procured a patent for said lands, and he denies that by false and fraudulent testimony he obtained title to the lands described.

Now, your defendant, by way of defence, avers that he did establish his actual residence upon said lands, and on the 14th day of January; that he resided upon said lands continuously without an absence of six months from the 14 day of January, 1900, up to and including more than 14 months thereafter; he avers that he cleared fully two acres of said land and that he did cultivate the said two acres of land during the season of 1900; that he plowed same and planted it in corn, peas and potatoes, making two crops during the said year, 1900; that he did, beginning on the 14th day of January, 1900, build a house fourteen by sixteen (14x16) upon said premises; that he did enclose a yard around said house and that he also enclosed the filed [field] of two acres in a fence.

Now, your defendant further avers that after the commutation by him made according to law, of the above described land, that he became convinced that same was not productive nor profitable as a homestead and for that reason he sold the same to the Wright-Blodgett Company, Limited, on June 21, 1901, and sold the building thereon to N. P. Carruth, of Vernon Parish, Louisiana.

He further avers that the title to said land described in plaintiff's bill of complaint, was invested in him at the time of the sale to the Wright-Blodgett Company, Limited, and that

he did actually for a good and valid consideration, sell said land to the Wright-Blodgett Company, Limited.

Now your defendant avers that previous to the application made under the entry of the land described in plaintiff's bill of complaint, your defendant had homesteaded under the laws of the United States, a little less than eighty acres of land nearby the same and close to the tract of land described in said bill of complaint, and that he did make ap-

19 plication for the the said latter tract, and homesteaded same, and commuted same under the laws of the United States in order that he might acquire the full amount of acreage, that is, one hundred and sixty acres, that he was entitled to homestead, under the laws of the United States; that he was living upon the land first entered, up to January 14, 1900, when he established his home upon the tract of land described in the bill of complaint.

That when he did leave said tract of land described in the bill of complaint, it was only to go upon and to do such work as was necessary to be done upon the first tract entered. That he was at no time absent from the tract of land described in bill of complaint for a period as long as six months.

Wherefore, your defendant prays that the bill of complaint filed by the United States of America, in the above numbered and entitled suit, be dismissed at its costs. He further prays for all orders and decrees necessary in the premises and for full and general relief.

By his attorneys: PAUL A. SOMPAYRAC &  
J. SHELDON TOOMER.

Indorsed: No. 364. In the Circuit Court of U. S. for 5th C. & W. Dist. of Louisiana. In Equity. United States vs. E. Z. Boyd & W. B. Co., Ltd. Answer of E. Z. Boyd. Filed January 7, 1907. W. E. Cline, Dy. Clerk.

20 In the Circuit Court of the United States for the  
Fifth Circuit and Western District of Louisiana.

The United States of America, Complainant,

vs.

No. 364. In Equity.

Elijah Z. Boyd and the Wright-Blodgett Company, Limited,  
Defendants.

The answer of the Wright-Blodgett Company, Limited, one of the defendants, to the bill of complaint of the United States of America, plaintiff, sayeth:

1. That the matters and things set forth in the first, second, third, fourth and fifth articles of the bill of complaint are true.

2. That if the matters and things set forth in the sixth, seventh and eighth articles of the bill of complaint be true, and if the depositions of Boyd and his witnesses were false and fraudulent and made with purpose to deceive, as alleged, said falsity and fraud and purpose to deceive were and are absolutely beyond the knowledge of this defendant, who equally with the officers and agents of the United States credited and believed said acts and depositions and acted upon the faith thereof in good faith.

3. That the matters and things set forth in the ninth article of the bill of complaint are true to this extent: that the patent issued as alleged to Elijah Z. Boyd did entitle the said defendant to exercise the right of absolute ownership of and over the said lands heretofore mentioned and described and assert a title to same. That said defendant did so assert the said title to respondent, who acquired same in good faith for adequate consideration, without notice, either actual or constructive; that if said title was acquired by fraud, respondent had no knowledge of the same, nor had it reason to suspect such fraud.

4. That the matters and things set forth in the tenth article of the bill of complaint are true, except that it is true Elijah Z. Boyd transferred the said lands to respondent on June 21, 1901, but that it is untrue that Boyd was then without real or apparent title thereto, the fact being that at that time the



right to a patent had become vested in the said Boyd, so that he held the full equitable title and the equivalent of the full apparent and legal title, and that the subsequent  
 21 issuance of the patent was a mere ministerial act which, however, inured to respondent's benefit.

Defendant especially denies that Nat Wasey has been or is its agent entrusted with the investigation, solicitation and purchase of lands for its use and benefit; that it, through him, or otherwise, knew of the alleged fraudulent acts and statements set forth in the bill of complaint, and it emphatically and especially denies that it did through its officers, or otherwise, aid, assist, advise and encourage the commission of the alleged fraudulent acts, or have knowledge of or suspect any fraud therein, but respondent avers that as alleged in the bill of complaint, its domicile is in Saginaw, Mich.; that it dealt with Boyd in the premises in good faith and at arm's length; that he held that they believed and were advised was a good title to the lands, which title they acquired in good faith, for a valuable consideration.

Respondent especially denies that it entered into, or had knowledge of any conspiracy against the United States in regard to said land and especially sets forth that until the service of process upon it in this suit, it had no knowledge of and no reason to suspect the claims herein urged.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged without this, that there is any matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and now herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied as true to the knowledge and belief of this defendant. All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WRIGHT & BLODGETT CO., LTD.  
 MITCHELL & YOUNG, & HALL &  
 MONROE,

Solicitors for Defendant.

Indorsed: No. 364. United States vs. Elijah Z. Boyd, et al. Answer of Wright-Blodgett Co., Ltd. Filed March 15, 1907. W. E. Cline, Dy. Clerk. Ent. Chancery Order Book, folio 354.

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22 Circuit Court of United States for the Fifth Circuit  
and Western District of Louisiana.

United States of America  
vs. No. 364.  
E. Z. Boyd, and the Wright-Blodgett Co., Ltd.

In the above numbered and entitled cause, the following agreement is entered into between M. C. Elstner, United States attorney, and J. Blanc Monroe, attorney for the Wright-Blodgett Co., Ltd.:

It is hereby agreed, between the parties to this case that at the Lake Charles term of the United States Circuit Court for the Western District of Louisiana, beginning December 21st, 1909, or thereabouts, all the testimony, evidence and documents heretofore offered by both sides shall be filed in Court, subject to objections made and to be made to same, at Alexandria, term of the Court; this agreement to be filed in the record. Cases to be continued if Monroe in Washington, or for other legal cause.

M. C. ELSTNER,  
U. S. Attorney.  
J. BLANC MONROE.

Dec. 20, 1909.

Indorsed: No. 364. In Equity. U. S. Cir. Court for Fifth Cir., West. Dist. of Louisiana. United States vs. E. Z. Boyd and Wright-Blodgett Company, Ltd. Agreement of U. S. Attorney and of J. Blanc Monroe for Wright-Blodgett Company. Filed at Lake Charles, La., December 22, 1909. Leroy B. Gulotta, Clerk U. S. Cir. Court.

23           Circuit Court of United States for the Fifth Circuit,  
              Western District of Louisiana.

United States of America

vs.

No. 364.

E. B. Boyd, and the Wright-Blodgett Company, Ltd.

Now comes the Wright-Blodgett Company, Ltd., co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

Wherefore, it now objects to the following testimony and evidence, and moves to strike out same:

1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

2. The bills having charged that the Wright-Blodgett Co., Ltd., had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them defendants object to any attempt to show such knowledge by other individuals, on the ground of variance and irrelevancy, and asks that same be stricken out.

3. There is no allegation in the bills charging invalidity in the entries on the ground that the entryman sold or agreed to sell, prior to making final proofs, hence any attempt to show such a situation would be irrelevant and a variance, and is objected to as such, and motion made to strike same out.

4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rocks is objected to as irrelevant and motion made to strike same out.

It appearing that there are filed in this case certain letters passing between the departments of the government and the officials thereof, and certain reports of special agents, same are objected to by the Wright-Blodgett Co., Ltd., defendant, on the following grounds:

1. As not the best evidence—hearsay.

2. As unsworn statements of persons not sworn as witnesses.

3. As res inter alios acta, irrelevant and immaterial.

HALL & MONROE and  
MITCHELL & YOUNG.

Indorsed: No. 364. U. S. Circuit Court, Fifth Circuit, Western District of Louisiana. United States of America vs. E. Z. Boyd and the Wright-Blodgett Co., Ltd. Motion. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk.

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24 United States Circuit Court, Fifth Circuit, Western District of Louisiana.

United States  
vs. No. 364. In Equity.  
E. Z. Boyd, and the Wright-Blodgett Co.

Pursuant to reservation of right, made at the time of the taking of the testimony, and the agreement, between Milton C. Elstner and J. Blanc Monroe, on December 22nd, 1909, the Wright-Blodgett Company makes to the testimony offered by complainant the following objection:

1. It reiterates here every objection noted by it on the stenographer's notes.

2. It objects to any attempt to show knowledge in it other than through the persons and in the manner specified in the bill; on the ground that same is irrelevant, and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this case. 172 Fed. 950. Last ten lines.

3. It objects to the introduction of any evidence, of whatsoever nature herein on the ground that indispensable parties and parties proper to be present are not before the Court.

4. It objects to the entire testimony and documentary evi-

dence of the United States as irrelevant. *Res inter alia acta* hearsay, and not the best evidence.

5. It objects to any attempt to show an agreement by the Wright-Blodgett Company to purchase these lands prior to final receipt on the ground that no such attack is made in the bills and the testimony is irrelevant and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this Court.

Indorsed: No. 364. In Equity. United States Circuit Court, Fifth Judicial Circuit, Western District of Louisiana. United States vs. E. Z. Boyd, and Wright-Blodgett Company. Exception Filed by Wright-Blodgett Company, to Certain Testimony. Filed Feb. 25, 1910. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.

25' In the District Court of the United States for the Western District of Louisiana, Fifth Circuit of the United States.

United States of America  
vs. No. 364. In Equity.  
E. Z. Boyd, and Wright-Blodgett Company.

This case came on for hearing this — day of May, 1912, before the Honorable Aleck Boorman, Judge presiding, and was heard upon the bill, answers, exhibits, proofs in the case and arguments of counsel, and thereupon, upon consideration thereof, and by virtue of the law and the evidence being in favor thereof; it was ordered, adjudged and decreed as follows:

It is ordered, adjudged and decreed, that the patent described in the bill issued to defendant, E. Z. Boyd, on the 15th day of February, in the year 1902, for the south half ( $S\frac{1}{2}$ ) of southwest quarter ( $SW\frac{1}{4}$ ), Section Fourteen (14), Township Two (2) North, Range Five (5) West, La. Mer., containing 81.25 acres, situated in the State of Louisiana; be, and the same is, hereby declared to be null and void for the said lands and premises described in the bill, as aforesaid, and the de-

fendants, E. Z. Boyd and Wright-Blodgett Company, be, and are hereby, required and directed to surrender and deliver and return said patent to the United States of America; and it is further adjudged and decreed that they be forever restrained and enjoined from ever claiming or asserting any right, benefit, privilege or advantage whatsoever under said patent. It is further ordered, adjudged and decreed that the defendant pay the costs of this proceeding.

Done, read and signed in open court at Alexandria, Louisiana, on this 6th day of May, 1912.

ALECK BOARMAN,  
U. S. Judge.

Indorsed: No. 364. United States District Court, Western District of Louisiana. United States vs. E. Z. Boyd and Wright-Blodgett Company. Judgment. Filed May 6, 1912. Leroy B. Gulotta, Clerk U. S. District Court, West. Dist. of Louisiana.

26

Patent.

The United States of America.

To All to Whom These Presents Shall Come, Greeting:

Certificate No. 21206.

Whereas, Elijah Z. Boyd, of Vernon Parish, Louisiana, has deposited in the general land office of the United States a certificate of the register of the land office at Natchitoches, Louisiana, whereby it appears that full payment has been made by the said Elijah Z. Boyd according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto for the south half of the southwest quarter of Section Fourteen, in Township Two North of Range Five West, of Louisiana meridian in Louisiana, containing eighty-one acres, and twenty-five hundredths of an acre, according to the official plat of the survey of the said lands, returned to the general land office by the surveyor general, which said tract has been purchased by the said Elijah Z. Boyd.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Elijah Z. Boyd, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging unto the said Elijah Z. Boyd and to his heirs and assigns forever.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand, at the City of Washington, the fifteenth day of February, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

By the President: T. ROOSEVELT.

[Seal]

By F. M. McKEAN, Secretary.

[Seal] Recorded Louisiana, Vol. 127, page 181.

C. H. BURTH,

[Seal]

Recorder of the General Land Office.

27 Indorsed: Patent. #21206. Elijah Z. Boyd.

Filed 5 day of Meh., 1902, and recorded in Vol. No. 1, page 382, Patent Record, Vernon Parish.

[Seal]

J. J. HICKS, Clerk.

By ....., Deputy.

Filed in 364, Meh. 1st, 1909.

J. F. SLATTERY,

M. in Ch.

28 State of Louisiana,  
Parish of Vernon.

Know all men by these presents, that I, Elijah Z. Boyd, single, of the Parish of Vernon, State of Louisiana, for and in consideration of the sum of three hundred and twenty-four dollars to me in hand paid by Wright-Blodgett Company, Limited, a firm or corporation organized and existing under the laws

of the State of Michigan and domiciled at Saginaw, Michigan, have granted, sold and conveyed, and by these presents do grant, sell and convey, with full subrogation to all my rights and actions of warranty against all former owners and vendors unto the said Wright-Blodgett Company, Limited, of the City of Saginaw and State of Michigan, all that certain lot or parcel of land situated in the Parish of Vernon and State of Louisiana, and known and described as follows, to-wit: The south half of the southwest quarter of Section Fourteen, in Township Two North of Range Five West, containing eighty-one acres, more or less, according to the government survey thereof.

To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Wright-Blodgett Company, Limited, its successors and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Wright-Blodgett Company, Limited, its successors and assigns against any person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand at Sigler, in the presence of Nat Wasey and J. M. Boyd, lawful witnesses, on the 21st day of June, anno domini one thousand nine hundred and one.

ELIJAH Z. BOYD.

Attest:

J. M. BOYD,  
NAT WASEY.

29      State of Louisiana,  
          Parish of Vernon.

Before me, Jerome J. Jackson, a notary public in and for said parish and state, duly commissioned and qualified, personally came and appeared Nat Wasey, to me well known, one of the attesting witnesses to the within and foregoing private act of sale of land, who being first duly sworn, says that he saw the contracting parties sign, also saw the other witness sign, and signed himself as such, on the day and day and date therein mentioned, and that he verily believes the same was done in good faith and for the uses, purposes and considerations therein set forth.

NAT WASEY.



Sworn to and subscribed to at Sigler, Louisiana, this 21st day of June, 1901.

Before me,

[Seal]

JEROME H. JACKSON,  
Notary Public.

Filed for record July 17, 1901. Recorded August 1, 1901.

W. A. WINFREE,  
Dy. Clerk & Ex-officio Recorder.

State of Louisiana,  
Parish of Vernon.

I hereby certify that the above and foregoing is a true and correct as the same appears on record in my office in the Town of Leesville, said parish and state, in Conveyance Book "S" at folio 548 & 549.

In testimony whereof, I have hereunto set my hand and affixed my official seal of office on this the 23rd day of February, A. D. 1909.

[Seal]

A. G. WINFREE,  
Clerk 12th District Court, Vernon Parish,  
Louisiana.

Indorsed: E. Z. Boyd to Wright-Blodgett Co. U. S. vs. E. Z. Boyd, et al. J. F. Slattery, M. in Ch.

30 "P" 24222 HRB W J M.

Department of the Interior,

General Land Office.

Washington, D. C., July 13, 1906.

I, G. F. Pollock, acting commissioner of the general land office, do hereby certify that the annexed copies, pages 1 to 33 inclusive, of the original and final papers in the case of homestead entry No. 8210 (Natchitoches, La., series), commuted

cash entry No. 21206, covering the S. 1/2 S. W. 1/4, Sec. 14, T. 2 N., R. 5 W., La. Mer., for which patent issued February 15, 1902, to Elijah Z. Boyd, together with copy of an adverse report on said entry dated June 18, 1906, by special agent, Clayton G. Coleman, are true and literal exemplifications of the original papers now on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

G. F. POLLOCK,

[Seal] Acting Commissioner of the General Land Office.

31 Receiver's Receipt, No. 8210. Application, No. 8210.

#### Homestead.

Receiver's Office, Natchitoches, La., January 13, 1900.

Received of Elijah Z. Boyd the sum of fourteen dollars six cents; being the amount of fee and compensation of register and receiver for the entry of south half of southwest quarter of Section Fourteen in Township Two North of Range 5 W., La. Mer., under Section No. 2290, Revised Statutes of the United States.

C. J. GREENE, Receiver.

\$14.06

Note: It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

\*\*\*\*\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the lands and improve the premises, but for no other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection of the settler disposing of the same. But the question whether the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for the recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*\*\*\*\*See note in red ink, which registers and receivers will read and explain thoroughly to person making application for lands where the affidavit is made before either of them.

32

### Homestead Affidavit.

Department of the Interior.

United States Com'r Land Office, at Cora, La.

November 4th, 1899.

I, Elijah Z. Boyd, of Cora, Vernon Ph., La., having filed my application No. 8210, for an entry under Section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any state or territory; that I am \*a native born citizen of the U. S. over twenty-one years of age, unmarried and on account of long distance and expense of trip, was unable to appear at the local land office at Natchitoches, La., that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent for any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered.

or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which I might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres and that I have not heretofore made any entry under the homestead laws.

(Sign plainly with full Christian name.)

ELIJAH Z. BOYD.

Sworn to and subscribed before me, this 4th day of November, 1899, at my office at Cora, in Vernon Ph., Louisiana.

JAMES M. BOYD,

[Seal]

U. S. Com'r. for W. D. of La.

\*Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family, or is over twenty-one years of age, as the case may be. It should be stated whether applicant is native born or not, and if not, a certified copy of his certificate of naturalization, or declaration of intention, as the case may be, must be furnished. (See page 45, circular of January 1, 1899.)

33 Application No. 8210.

Homestead.

U. S. Com'r Land Office, at Cora, La.

November 4th, 1899.

I, Elijah Z. Boyd of Cora, Vernon Parish, La., do hereby apply to enter, under Section 22892289, Revised Statutes of the United States, the S 1/2 S. W. 1/4 of Section 14, in Township 2 of Range 5 West, containing 81.25 acres.

ELIJAH Z. BOYD.

## United States Land Office.

Natchitoches, La., Jan. 13, 1900.

I, J. Ernest Breda, register of the land office, do hereby certify that the above application is for surveyed lands of the class which applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

J. ERNEST BREDA, Register.

Indorsed: No. 8210. Homestead Application. Elijah Z. Boyd, Natchitoches, La., Jan. 13, 1900. To R. & R. July 6, 1901, G. B. D. Ex Receipt 21250. Sec. 14, Township 2, Range 5. 4/130. Double minimum excess order to be refunded on S. W. 1/4 of S. W. 1/4. Nov. 28/02. Noted EHH—E. C. V.

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34 Receiver's Duplicate Receipt No. 8210.

Application No. 8210.

Homestead.

Receiver's Office, Natchitoches, La.

January 13th, 1900.

Received of Elijah Z. Boyd the sum of fourteen dollars six cents; being the amount of fee and compensation of register and receiver for the entry of S. 1/2 of S. W. 1/4 of Section 14 in Township 2 North of Range 5 W., La. Mer., under Section 2290, Revised Statutes of the United States.

C. J. GREENE, Receiver.

\$14.06

81.25 acres at 2.50 (8210 Receiver Certificate)

Note—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultiva-

tion, failing to do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and cultivation from the date of filing affidavit to the time of payment.

\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for not other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*See note in red ink, which registers and receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

35

### No. 1. Homestead.

Land Office at Natchitoches, La.

April 2, 1901.

I, Elijah Z. Boyd of Cora, La., who made homestead application No. 8210 for the S. 1/2 of S. W. 1/4, Sec. 14, Tp. 2 N., R. 5 W., La. Mer., do hereby give notice of my intention to make commutation final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before James M. Boyd, U. S. Com., at Sigler, Louisiana, on May 18th, 1901, by two of the following witnesses:

ED. MORRISON of Cora, La.

RUS BOND of Cora, La.

NAT CARRUTH of Cora, La.

RICHARD HENDERSON of Cora, La.

ELIJAH Z. BOYD.

(Signature of Claimant.)

## Land Office at Natchitoches, La.

April 2, 1901.

Notice of the above application will be published in the Vernon News printed at Leesville, La., & which I hereby designate as the newspaper published nearest the land described in said application.

J. ERNEST BREDÁ, Register.

Notice to Claimant—Give time and place of proving up and name the title of the officer before whom proof is to be made; also give names and postoffice address of four neighbors, two of whom must appear as your witnesses.

Indorsed: 8210. Elijah Z. Boyd. 14—2—5. Commutation to publish April 2—May 18. Vernon News.

36 State of Louisiana,  
Parish of Vernon.

Before me, the authorized authority, on this day personally appeared Geo. F. Smedley, editor of the Vernon News, Leesville, Louisiana, who first being duly sworn says that notice of final proof of Elijah Z. Boyd, H. E. No. 8210 first appeared in its issue of April 4th, 1901, and each weekly issue thereafter for 30 days, last publication appearing in the issue of May 23rd, 1901.

GEO. F. SMEDLEY, Editor.

Sworn to and subscribed before me at my office at Leesville, La., this the 18th day of May, 1901.

JAMES M. BOYD.

[Seal]

U. S. Com.

## Commutation Notice for Publication.

Department of the Interior,  
Land Office at Natchitoches, La.

April 2, 1901.

Notice is hereby given that the following named settler has

filed notice of his intention to make final commutation proof in support of his claim, and that said proof will be made before James M. Boyd, U. S. Com. at Sigler, La., May 18, 1901, viz., H. E. 8210:

Elijah Z. Boyd for the S.  $1/2$  S. W.  $1/4$ , Sec. 14, Tp. 2 N., R. 5 W. La. Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz.:

Ed. Morrison, Rus Bond, Nat Carruth, Richard Henderson, all of Cora P. O., La.

J. ERNEST BREDA, Register.

37 Commutation Notice for Publication.

Department of the Interior,  
Land Office at Natchitoches, La.

April 2, 1901.

Notice is hereby given that the following named settler had filed notice of his intention to make final commutation proof in support of his claim, and that said proof will be made before James M. Boyd, U. S. Com. at Sigler, La., May 18, 1901, viz.:

H. E. 8210, Elijah Z. Boyd for the S.  $1/2$  S. W.  $1/4$  Sec. 14, Tp. 2 N., R. 5 W., La., Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz.:

Ed. Morrison, Rus Bond, Nat Carruth, Richard Henderson, all of Cora P. O., La.

J. ERNEST BREDA, Register.

38 Certificate as to Posting of Notice.

Department of the Interior,  
United States Land Office, at Natchitoches, La.

May 24, 1901.

I, J. Ernest Breda, register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted



in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 2 day of April, 1901.

J. ERNEST BREDÁ, Register.

Indorsed: 8310 posting certificate.

- 39 (To be used in cases of commuted homestead entries. For taking the testimony of claimant and his witnesses in making commutation proof, use the prescribed forms for "Homestead Proof.")

### Affidavit Required of Claimant.

(Section 2301 of the Revised Statutes of the United States.)

I, Elijah Z. Boyd, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 8210, made upon the S. 1/2 of S. W. 1/4, Section 14, Township 2 N. Range 5 W., do solemnly swear that I made settlement upon said land on the 14th day of January, 1900, and that since such date, to-wit on the 18 day of May, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated about 2 acres of said land, and that no part of said land had been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except W. 1/2 of N. W. 1/4, Sec. 2, Tp. 1, N. R. 5, W., La. Mer.

(Sign plainly with full Christian name.)

ELIJAH Z. BOYD.

Subscribed and sworn to before me this 18th day of May, 1901, at my office at....., in ..... County, Louisiana.

JAMES M. BOYD.

U. S. Com. for W. D. of La.

Indorsed: 8210 commutation affidavit.

## Homestead Proof.

## Testimony of Witness.

I, RICHARD HENDERSON, being called as witness in support of the homestead entry of Elijah Z. Boyd for S. 1/2 of S. W. 1/4, Sec. 14, Tp. 2 N. R. 5 W. La. Mer., testifies as follows:

Ques. 1. What is your name, age, and postoffice address?

Ans. Richard Henderson, 20 years, Cora, Vernon Ph. La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Ordinary pine land, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. January 14th, 1900, and established actual residence at the same time.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. He has. (The settler is unmarried.)

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent at all.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising one crop thereon.

Ques. 9. What improvements are on the land, and what is their value?

Ans. One house, 12x14, fruit trees and good water, valued at \$75.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

41 Ques. 11. Has the claimant mortgaged, sold or contracted to sell, any portion of said homestead.

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he has.

RICHARD HENDERSON.

(Sign plainly with full Christian name.)

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 18th day of May, 1901, at my office at Sigler, in Vernon Ph., Louisiana.

(See note on fourth page.)

[Seal]

JAMES M. BOYD.  
U. S. Com. for W. D. of La.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

42 I, RUS BOND, being called as a witness in support of the homestead entry of Elijah Z. Boyd for S. 1/2 of S. W. 1/4, Sec. 14, Tp. 2, N. R. 5 W., La. Mer., testifies as follows:

Ques. 1. What is your name, age and postoffice address?

Ans. Rus Bond, 41 years, Cora, Vernon Ph., La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land?

Ans. Ordinary pine land. . . . Some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. January 14th, 1900, and established actual residence at the same time.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. He has. (The settler is unmarried.)

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent at all.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising one crop thereon.

Ques. 9. What improvements are on the land, and what is their value?

Ans. One house, 12x14, fruit trees, good well, valued at \$75.00.

43 Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he has.

RUS BOND.

(Sign plainly with full Christian name.)

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 18th day of May, 1901, at my office at Sigler, in Vernon Ph., Louisiana.

(See note on fourth page.)

JAMES M. BOYD.

[Seal]

U. S. Com. for W. D. of La.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

## Homestead Proof—Testimony of Claimant.

44 I, ELIJAH Z. BOYD, being called as a witness in his own behalf in support of homestead entry No. 8210, for S. 1/2 of S. W. 1/2, Sec. 14, Tp. 2, N. R. 5 W., La. Mer., testified as follows:

Ques. 1. What is your name, age and postoffice address?

Ans. Elijah Z. Boyd, 26 years, Cora, Vernon Ph., La.

Ques. 2. Are you a native born citizen of the United States, and if so, in what State or Territory were you born?

Ans. I am. Was born in Louisiana.

Ques. 3. Are you the identical person who made homestead entry No. 8210, at the Natchitoches Land Office on the 13th day of January, 1900, and what is the description of the land now claimed by you?

Ans. I am. S. 1-2, S. W. 1/4, Sec. 14, Tp. 2, N. R. 5 W., La. Mer.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. January 14th, 1900, and established actual residence at the same time. One house, 12x14, fruit trees, and about two acres under good rail fence. Valued at \$75.00.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Myself. I have resided continuously. (I am unmarried.)

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. I have not been absent at all.

Ques. 7. How much of the land have you cultivated each

season, and for how many seasons have you raised crops thereon?

Ans. About two acres, raising one crop thereon.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

45 Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable.

Ans. Ordinary pine land. Most valuable for farming.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. I have. N. 1/2 of N. W. 1/4, Sec. 2, Tp. 1, N. R. 5 W., La. Mer.

Ques. 12. Have you sold, conveyed or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. I have not.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same and state where the same is kept.)

Ans. I have not.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. I have not made any of any kind since August 30th, 1890.

ELIJAH Z. BOYD.

(Sign plainly with full Christian name.)

\*(In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five year) homestead cases).

46 I hereby certify that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me this 18 day of May, 1901, at my office at Sigler, in Vernon Ph., Louisiana.

(See note below.)

JAMES M. BOYD,  
U. S. Com. for W. D. of La.

Note—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

(Title LXX.) Crimes. (Ch. 4.)

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Indorsed: Homestead proof. Land office at Natchitoches, La. Original application No. 8210. Final certificate No. 21206. Approved: J. Ernest Breda, Register; C. J. Greene, Receiver. U. S. Land Office, Natchitoches, La. Received on May 24, 1901, at — o'clock. —.



47

No. 162-6. Short Form Affidavit.

State of Louisiana,  
Parish of Vernon.

Personally came and appeared before the undersigned authority Elijah Z. Boyd, who, being duly sworn, deposeth and saith:

That he made H. E. Nos. 6507 for W. 1/2, N. W. 1/4, Sec. 2, T. 1' N. R. 5 W., La. Mer. I made each of the above described entries. My failing to explain my original H. E. in my affidavit, Form No. 4-063, made January 13th, 1900, is due to ignorance and carelessness on the part of myself and the officer before whom the affidavit was made.

ELIJAH J. BOYD.

Sworn to and subscribed before me, this 26th day of July, 1901.

JAMES M. BOYD,

[Seal]

U. S. Com.

48

Homestead Act of May 20, 1862.

(Revised Statutes of the United States, Section 2357.)

Excess. Receiver's Receipt. No. 21250.

Receiver's Office, Natchitoches, La.,

August 3rd, 1901.

Received of Elijah Z. Boyd the sum of twenty dollars, fifty cents, being in full for eight acres and twenty hundredths of S. 1/2 of S. W. 1/4, Section No. 14, in Township No. 2, N. of Range No. 5 W., La. Mer., being excess in said tract over the area entered under the Homestead Act, per application and receipt No. 8210.

\$20.50.

C. J. GREENE, Receiver.

Per Hon. Com'r Letter "C"

July 6, 1901. J. W. B.

Indorsed: No. 21250. Excess receipt. Land Office at Natchitoches, La. August 3rd, 1901. Elijah Z. Boyd. Homestead application. No. 8210. 4/130.

49 No. 21206.

## Receiver's Office at Natchitoches, La.

May 24th, 1901.

Received from Elijah Z. Boyd, of Cora, P. O., of Vernon Parish, Louisiana, the sum of two hundred and three dollars and thirteen cents; being in full for the south of southwest quarter of Section No. Fourteen, in Township No. Two North, of Range No. 5 W., La. Mer., containing eighty-one acres and twenty-five hundredths, at \$2.50 per acre.

\$203.13.

C. J. GREENE, Receiver.

\$1.06 testimony fee received. Number of written words 706. Rate per 100 words, 15 cents.

Double minimum excess ordered to be returned on S. W. 1/4 of S. W. 1/4, Nov. 28/02.

E. C. V.

Indorsed: Filed 17th day of July, 1901, and recorded in Vol. No. 1, page 239, patent record, Vernon Parish. W. A. Winfree, Dy. Clerk. (Seal.)

50 No. 21206.

## Land Office at Natchitoches, La.

May 24, 1901.

It is hereby certified that, in pursuance of law, Elijah Z. Boyd, residing at Cora, in Vernon County, State of Louisiana, on this day purchased of the Register of this office the south half of southwest quarter, of Section 14, in Township No. 2, north of Range No. 5 West, of the La. principal Meridian, Louisiana, containing 81.25 acres, at the rate of two dollars and fifty cents per acre, amounting to two hundred and three dollars and thirteen cents, for which the said Elijah Z. Boyd has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Elijah Z. Boyd shall be entitled to receive a patent for the lot above described.

J. ERNEST BREDÁ, Register.

Indorsed: No. 21206. Cash entry. Land Office at Natchitoches, La. Sec. 14, Town 2, Range 5 W. Commuted H. E. No. 8210. Div. C, List No. 5. Patent Feb. 28, 1902, to Michael Kelley, Lake Charles, La. Fielder B. Chew, attorney, advised. Approved Feb. 1, 1902, by O. N. Burke, Clerk, Division "C." Patented Feb. 15, 1902. Recorded Vol. 127, page 181. Filed in evidence in No. 364 and marked exhibit "B," Feb. 27, 1909. J. F. Slattery, Master in Chancery. 4/130.

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51 Special Agents must retain a press copy of this report.

#### Report of Fraudulent Claim or Entry.

This form must be used only in cases found or believed to be fraudulent or abandoned. Cases found to be lawfully made and maintained need not be reported on this form, but must be reported by letter containing brief statement of facts.

In cases of homestead claims the blanks must be filled up strictly as here indicated. In other cases the form will be followed as closely as applicable, and in all cases reported such other points will be covered as the nature of the case may require.

In every instance, when names of parties or witnesses are given, the postoffice address and residence must also be stated.

1. Name of claimant.

Elijah Z. Boyd.

2. Description of land covered by filing or entry.

S. 1/2, S. W. 1/4, Sec. 14, Tp. 2 N., R. 5 W., Louisiana Meridian.

3. Date of examination.

May 23, 1906.

4. Character of land (timber, mineral, agricultural, or desert). If timber land, whether, if cleared, it would be unfit for agricultural; if for timber, culture entry, whether section is naturally void of timber; if desert, whether grass or other agricultural crops could be produced without artificial irrigation; if mineral, character and evidence thereof.

Pine timbered land, which, if cleared, would be suitable for cultivation.

5. Date and number of filing or entry; if proof has been made, date of proof, and number of final certificate.

H. E. 8210, Jan. 31, 1900. C. E. 21206, May 24, 1901. Patent issued February 15, 1902.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant, and nature of claim.

The land is unoccupied, but is claimed by the Wright-Blodgett Co., Ltd., of Saginaw City, Mich., by virtue of a warranty deed from the entryman.

7. Is the land inclosed for stock ranging or other purposes, and if so, by whom? Give extent of such inclosure, and describe the land inclosed.

The land is not inclosed.

8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold.

No timber has been cut.

52 9. Character, extent, and value of improvements in detail, when and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were constructed, and cost of same. If a timber-culture entry, amount and date of breaking, planting, etc.

There are no improvements of any character on the land. Michael Smith, who has lived on the land adjoining this tract, pointed out to me the exact spot where he said that he said Boyd erected a rough-board house without windows, floor, or chimney, during the summer, or fall of 1900, and made an enclosure of less than one-half acre, one-third of which he plowed, but never cultivated. These were subsequently burned by forest fires.

10. Residence of claimant: When actually established on

the land, and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land, or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to make the entry, and is known in the neighborhood of the claim:

Claimant lives at Cora, La., about 6 miles from the land in question. He never established a residence on the land. He is the head of a family who live with him at Cora, La. I was told that Boyd would make an affidavit that he never lived on the tract, but not considering the affidavit of a man who would commit perjury a valuable asset, I declined to ask for it.

11. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant: Whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferee, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record; whether the entry has been abandoned or relinquished, and if so, when and for whose benefit.

There is no evidence that the entry was made in the interest of any other party, but it was made for purely speculative purposes. The records of Vernon Parish, La., show records of a deed from claimant to the Wright-Blodgett Co., of Saginaw City, Mich. The consideration named being \$324.00. Said deed is recorded in Bk. "S," pp. 548. The purchase was made by Nat Wasey, the authorized agent of the Wright-Blodgett Co., who knew well the fraudulent character of the entry. Date of deed to Wright-Blodgett Co., June 21, 1901, a date prior to issue of patent.

12. Names and postoffice address of witnesses; their reliability; abstract of their testimony.

Michael Smith, J. D. Wilson, and numbers of others who live in the vicinity, P. O., Leander, La.; they are reliable and will testify to the facts set forth in this report.

13. Have you secured affidavits of witnesses? If so, submit them or copies thereof.

Yes; see affidavits herewith.

14. Have you requested claimant to make a statement? If so, and he does not intend to offer proof, did you try to obtain a relinquishment or an affidavit to that effect (without coercion)?

No.

53 15. Was the fraud willful?

Yes.

16. Have any legal proceedings been instituted?

Elijah Z. Boyd was indicted for perjury at Shreveport, La., Nov. 18, 1903, as witness in final proof of Samuel E. Bryers, H. E. No. 8261.

17. Action recommended by agent, that a suit be instituted to annul and cancel the patent.

Dated at New Orleans, La., June 18, 1906.

CLAYTON G. COLEMAN,  
Special Agent, General Land Office.

Note—If the space allotted under any of the above headings is not sufficient to state the particulars required, state the same on a separate sheet referring to the number of the question, and attach the same to the report.

Indorsed: 102549. U. S. General Land Office. Received June 23, 1906. 70/401. Report of Clayton G. Coleman, Special Agent, G. L. O., New Orleans, La. June 18th, 1906. In the case of Homestead Entry No. 8210, C. E. 21206, L. O. Natchitoches, La. Name, Elijah Z. Boyd. Tract, S. 1/2, S. W. 1/4, Sec. 14, Tp., 2, N R. 5 W. No. of report —; recommendation, suit; date of office letter directing the investigation, April 29th, 1904. (File 24222.) New Orleans, June 30/06. Respectfully forwarded: Approved, J. W. Williams, Chief Field Div.

54           State of Louisiana,  
              Vernon Parish, ss.

MICHAEL SMITH, having been duly sworn, deposes and says that he is a citizen of the United States, fifty-four years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he is well acquainted with the additional homestead entry of Elijah Z. Boyd, embracing the S. 1/2, S. W. 1/4 of Sec. 14, T. 2 N., R. 5 W., La. Meridian, and that he has lived on land adjoining the said additional homestead during the past eight years; that he is also well acquainted with the said Elizah Z. Boyd all his life; that the said Boyd never resided on the said homestead during the life of the said entry, nor at any other time during the past eight years; that he lived at that time near Cora, La., about five miles from the said homestead; that he built a board house on said claim about 14x10, more than six months after he made the said entry, and inclosed about a half acre, one-third of which he plowed up, but raised no crop thereon.

Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

MICHAEL SMITH.

Subscribed and sworn to before me at Leander, La., this 23rd day of May, A. D., 1906.

CLAYTON G. COLEMAN,  
Special Agent, G. L. O.

55           State of Louisiana,  
              Vernon Parish, ss.

JEFFERSON D. WILSON having been duly sworn, deposes and says that he is a citizen of the United States, forty-five years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he is well acquainted with the land embraced in the additional homestead entry of Elijah Z. Boyd, which is described as the S. 1/2, S. W. 1/4 of Section 14, T. 2 N., R. 5 W., La. Meridian, and that he has lived within a mile and a half of the said land during the past eleven years; that he is also well acquainted with the said Elijah Z. Boyd, and has

known him ever since he was a child; that the said Boyd never lived on the above described land, but has always lived near Cora, La., about four miles from the said entry; that the said Boyd built a board house on said entry about 14x10 feet, more than six months after he made the said entry, and inclosed about half an acre, one-third of which he plowed, but raised no crop thereon. Affiant makes this affidavit of his own free will and accord, and in the interest of right and justice.

JEFFERSON D. WILSON.

Subscribed and sworn to before me at Vernon Parish, La., this 25th day of May, A. D. 1906.

CLAYTON G. COLEMAN,

Special Agent, G. L. O.

56 State of Louisiana,  
Vernon Parish, ss.

MICHAEL SMITH, having been duly sworn, deposes and says that he is a citizen of the United States, fifty-four years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he was well acquainted with Nat Wasey during the time he was in this community buying and acquiring timbered lands for the Wright-Blodgett Company of Saginaw City, Michigan, during a period of about five years, from about 1899 to 1904; that the said Wasey was the duly accredited and authorized agent of the said company during that time, to buy, acquire and pay for timbered lands in Vernon Parish, La., for said company; that he always examined the homesteads which he purchased for said company thoroughly before purchasing the same, both as to the timber thereon, the improvements, and as to whether the claimants had complied with the requirements of law; that he made such investigation in regard to the homestead claim of Elijah Z. Boyd, which is located in Section 14, T. 2 N., R. 5 W., La Mer., and knew that the said Boyd had not resided on his said homestead during the life of his claim, but had lived during that time at Cora, La., a distance of some four or five miles from the said homestead.

Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

MICHAEL SMITH.



Subscribed and sworn to before me at Leander, La., this 9th day of June, A. D. 1906.

CLAYTON G. COLEMAN,  
Special Agent, G. L. O.

Indorsed: Filed Sept. 7th, 1906. W. Jackson, Clerk.

57

United States

vs.

No. 364.

E. Z. Boyd et al.

Abstract of Title to Wright-Blodgett Company, Limited, from the Notarial and Abstract Office of J. J. Hicks, of Leesville, La.

Southwest quarter of northeast quarter (excepting 7 acres out of the northwest corner of the said 40) of Section 34, Township 3 North, Range 5 West; south half of southwest quarter of Section 14, Township 2 North, Range 5 West; northeast quarter of Section 8, Township 2 North, Range 5 West; southeast quarter of Section 8, Township 2 North, Range 5 West; east half of southeast quarter of southwest quarter of Section 17, Township 2 South, Range 6 West, in Vernon Parish, Louisiana.

58

C. J. Greene, Receiver, Vendor.  
John F. Lowe, Vendee.

Instrument, final receipt.

Month. Day. Year.

Date of instrument, May 25 1901.

Date of ackn'ment, May 25 1901.

No. of witnesses,

Officer before whom authenticated, C. J. Greene, Receiver.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book No. 1, page 240.

Consideration, \$1.89.

## Part of Section.

S. W. 1/4 of N. E. 1/4, Sec. 34, Twp. South 3 N. Range West 5 W. No of acres, 37.90.

John F. Lowe, Vendor.  
Wright-Blodgett Co., Ltd., Vendee.

## Instrument, Wty Deed.

Month. Day. Year.

Date of instrument, June 21 1901.

Date of ackn'ment, June 21 1901.

No. of witnesses, 2.

Officer before whom authenticated, Jerome H. Jackson,  
N. P.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book S, page 544.

Consideration, \$100.00.

## Part of Section.

S. W. 1/4 of N. E. 1/4, excepting seven acres out of the N. W. corner of said forty, Sec. 34, Twp. South 3 N., Range West 5 W. No of acres,

Witnesses to signature of John F. Lowe:

NAT WASEY.

• JAMES M. BOYD.

C. J. Greene, Receiver, Vendor.

Elijah Z. Boyd, Vendee.

## Instrument, Final Receipt.

Month. Day. Year.

Date of instrument, May 24 1901.

Date of ackn'ment, May 24 1901.

No. of witnesses,

Officer before whom authenticated, C. J. Greene, Receiver.

Month. Day. Year.

When filed, July 17 1901.

Where recorded, Book No. 1, page 239.

Consideration, \$203.13.

## Part of Section.

S. 1-2 of S. W. 1/4, Sec. 14, Twp. South 2 N, Range West  
5 W. No of acres, 81.25.

59

Elijah Z. Boyd, Vendor.  
Wright Blodgett Company, Ltd., Vendee.

## Instrument, Wty Deed:

|                     |        |      |       |
|---------------------|--------|------|-------|
|                     | Month. | Day. | Year. |
| Date of Instrument, | June   | 21   | 1901. |
| Date of Ackn'ment,  | June   | 21   | 1901  |
| No. of witnesses:   | 2.     |      |       |

Officer before whom authenticated, Jerome H. Jackson, N. P.

|                 |                   |      |       |
|-----------------|-------------------|------|-------|
|                 | Month.            | Day. | Year. |
| When filed,     | July              | 17   | 1901. |
| Where recorded, | Book S, page 248. |      |       |
| Consideration:  | \$3.24.           |      |       |

## Part of Section.

S. 1/2 of SW. 1/4, Sec. 14, Twp. South 2 N. Range West 5  
W. No. of Acres 81, more or less.

Witnesses to signature of Elijah Z. Boyd:

J. M. BOYD.  
NAT WASEY.

C. J. Greene, Receiver, Vendor.  
Joe J. Hicks, Vendee.

## Instrument, final receipt:

|                     |        |      |       |
|---------------------|--------|------|-------|
|                     | Month. | Day. | Year. |
| Date of Instrument, | July   | 6    | 1901  |
| Date of Ackn'ment,  | July   | 6    | 1901  |
| No. of witnesses:   | —      |      |       |

Officer before whom authenticated, C. J. Greene, receiver.

|                 |                       |      |       |
|-----------------|-----------------------|------|-------|
|                 | Month.                | Day. | Year. |
| When filed,     | July                  | 17   | 1901  |
| Where recorded, | Book No. —, page 240. |      |       |
| Consideration:  | \$400.00.             |      |       |

## Part of Section.

NE 1/4, Sec. 8, Twp. South 2 N. Range West 5 W. No. of  
Acres 161.24.

Joseph J. Hicks, Vendor.  
Wright Blodgett Company, Ltd., Vendee.

Instrument, Wty Deed:

|                     |        |      |       |
|---------------------|--------|------|-------|
|                     | Month. | Day. | Year. |
| Date of Instrument, | July   | 10   | 1901  |
| Date of Ackn'ment,  | July   | 10   | 1901  |

No. of witnesses: 2.

Officer before whom authenticated, W. A. Winfree, Dy.  
Clerk, &c.

|             |        |      |       |
|-------------|--------|------|-------|
|             | Month. | Day. | Year. |
| When filed, | July   | 17   | 1901  |

Where recorded, Book S, page 545.  
Consideration: \$800.00.

## Part of Section.

NE 1/4, Sec. 8, Twp. South 2 N. Range West 5 W. No. of  
Acres 161.24.

Witnesses to signature of Joseph J. Hicks:

B. F. KOONCE.

H. S. SANDERS, JR.

60 C. J. Greene, Receiver, Vendor.  
Walter O. Allen, Vendee.

Instrument, final receipt:

|                     |        |      |       |
|---------------------|--------|------|-------|
|                     | Month. | Day. | Year. |
| Date of instrument, | July   | 8    | 1901  |
| Date of Ackn'ment,  | July   | 8    | 1901  |

No. of witnesses: —.

Officer before whom authenticated, C. J. Greene, receiver.

|             |        |      |       |
|-------------|--------|------|-------|
|             | Month. | Day. | Year. |
| When filed, | July   | 17   | 1901  |

Where recorded, Book No. 1, page 239.  
Consideration: \$400.00.

## Part of Section.

SE 1/4, Sec. 8, Twp. South 2 N. Range West 5 W. No. 1  
Acres, 161.25.

Walter O. Allen, Vendor.  
Wright Blodgett Company, Ltd., Vendee.

Instrument, Wty Deed:

Month. Day. Year.

Date of instrument. July 10 1901

Date of Ackn'ment. July 10 1901

No. of witnesses: 2.

Officer before whom authenticated, W. A. Winfree, Dy  
Clerk, &c.

Month. Day. Year.

When filed, July 17 1901

Where recorded, Book S, page 546.

Consideration: \$800.00.

## Part of Section.

SE 1/4, Sec. 8, Twp. South 2 N. Range West 5 W. No. of  
Acres, 161.25.

Witnesses to signature of Walter O. Allen.-

B. F. KOONCE.

H. L. SANDERS, JR.

Charles P. Johnston, Receiver Vendor.  
James M. Weldon, Vendee.

Instrument, final receipt:

Month. Day. Year.

Date of instrument, Dec. 4 1900

Date of Ackn'ment, Dec. 4 1900

No. of witnesses: —.

Officer before whom authenticated, Charles P. Johnston,  
receiver.

Month. Day. Year.  
 When filed, July 17 1901  
 Where recorded, Book No. 1, page 43.  
 Consideration: \$3.00.

Part of Section.

SE 1/4 of SW 1/4, together with other lands, Sec. 17, Twp.  
 South 2 S. Range West, 6 W. No. of Acres, 40. More or less.

61 James M. Weldon, Vendor.  
 Wright Blodgett Company, Ltd., Vendee.

Instrument, Warranty Deed:

Month. Day. Year.  
 Date of instrument, June 21 1901  
 Date of Ackn'ment, June 21 1901  
 No. of witnesses: 2.  
 When filed, July 17 1901  
 Officer before whom authenticated, Jerome H. Jackson,  
 N. P.  
 Where recorded, Book S, page 549.  
 Consideration: \$50.00.

Part of Section.

E 1/2 of SE 1/4 of SW 1/4, Sec. 17, Twp. South 2 S.  
 Range West, 6 W. No. of acres, 20. More or less.

Witnesses to signature of James M. Weldon.

NAT WASEY.

JAMES M. BOYD.

State of Louisiana.

Parish of Vernon.

Office of clerk of the 12th Judicial Dist. Court and ex-  
 officio recorded in and for parish and state aforesaid. I do  
 hereby certify that I have carefully examined the foregoing  
 abstract of title to Wright Blodgett Company, Limited; and  
 there are no mortgages liens nor incumbrances of record

against the property above described. I further certify that there are no judgments against nor suits pending either against the property above described or parties mentioned above. I further certify that the property above described is duly recorded in the records of Vernon Parish and properly indexed.

Given under my hand and seal of office at Leesville, La.,  
August 5, 1901.

[Seal]

W. A. WINFREE,

Dy. Clerk & ex-Officio Recorder.

Indorsed: No. 382. United States vs. J. J. Hicks, et al. Abstract of Title to Wright Blodgett Company, Limited, from the Notarial and Abstract Office of J. J. Hicks, Leesville, La. Filed in Ev. May 1st, 09. J. F. Slattery, M in C. Applies also to No. 364 E. S. vs. E. Z. Boyd case.

62

Law Office of

Pujo & Moss

First National Bank Building,

Ryan Street.

Arsene P. Pujo,  
Clement D. Moss.

Lake Charles, La., December 23rd, 1901.

We hereby certify that we have carefully examined the foregoing abstract of title to the southwest quarter of north-east quarter (excepting 7 acres out of the northwest corner of the said 40) of Section 34, Township 3 North, Range 5 West; south half of southwest quarter of Section 14, Township 2 North, Range 5 West; northeast quarter of Section 8, Township 2 North, Range 5 West; southeast quarter of Section 8, Township 2 North, Range 5 West; east half of southeast quarter of southwest quarter of Section 17, Township 2 South, Range 6 West, in Vernon Parish, Louisiana, standing of record in the name of the Wright-Blodgett Company, Limited, and it is our opinion that the title thereto is good and valid and

the said property is legally vested in said company at this date.

Respectfully submitted,  
PUJO & MOSS.

\* \* \* \* \*

64 TESTIMONY TAKEN OUT OF COURT BY  
ORDER OF COURT BEFORE THE HON.  
WALTER JACKSON, CLERK OF SAID  
COURT AND SPECIAL EXAMINER  
UNDER APPOINTMENT OF THE HON.  
ALEX. BOARMAN, JUDGE.

Of Date May 30th, 1907, at Lake Charles, La., on the . . . . .  
Day of January, 1908.

United States Circuit Court, Fifth Circuit, Western District  
of Louisiana.

No. . . . . In Equity.

United States Government

vs.

No. 364.

E. Z. Boyd and Wright-Blodgett Co., Ltd.

E. P. Mills, Asst. U. S. Atty. for Complainant.

Messrs. Mitchell & Young and Hall & Monroe, for Defendants.

65 Stenographer's Oath.

I, Fred W. Pullman, hereby solemnly swear that I will faithfully and correctly take the testimony of all witnesses in the case of the United States vs. E. Z. Boyd and the Wright-Blodgett Co., Ltd., taken at Lake Charles, La., this . . . . . day of January, 1908, and that I will file all documents offered in evidence and correctly transcribe the testimony of the witnesses and forward the same to the clerk of the United



States Circuit Court at Shreveport, La., within twenty days from the date hereof.

.....  
Stenographer.

Inasmuch as the witnesses in these cases have come to testify, some of them from a great distance and desire to return to their homes as soon as possible, it is agreed that they sign the stenographer's notes. The further signature upon their part is waived.

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66 MICHEAL SMITH, being first duly sworn,  
testified as follows:

Direct Examination.

By Mr. Mills:

Q. Mr. Smith, what is your name?

A. Micheal Smith.

Q. What is your age?

A. 56 years.

Q. Where do you reside?

A. Vernon Parish.

Q. How long have you lived there?

A. 51 years.

Q. Do you know Elijah Z. Boyd?

A. Yes, sir.

Q. How long have you known him?

A. Since he was a little boy.

Q. What is your occupation?

A. I farm. I am a farmer and a minister by occupation.

Q. What is Mr. Boyd's occupation?

A. He is a farmer.

Q. How long has he been a farmer.

A. Since he has been able.

Q. How old is Mr. Boyd?

A. Something about 30—I do not know.

Q. Do you know anything about his making a homestead entry about 1899 or 1900?

A. Yes, sir.

Q. Do you know of knowledge whether or not he made the entry at this time?

A. I never looked at the records.

Q. Where did Mr. Boyd live in 1899?

A. At Cora.

Q. In what parish?

67 A. Vernon.

Q. Do you know the location of the S 1/2 of the S. W. 1/4 Sec. 14, Twp. 2, N. Range 5 West La. Meridian?

A. I do.

Q. How far do you live from that land?

A. About 300 yards.

Q. How far is that land from Cora?

A. About three and a half miles as near as I can say.

Q. Where did you reside in 1900, 1901 and 1902?

A. Just where I am at present.

Q. Did you not have occasion to go upon this land during this time?

A. Evidently, I did. I passed through with my stock at various times. It was right on the road to my land.

Q. Did you ever know any one that lived on that land during that time?

A. I did not.

Q. Did you ever see Mr. Boyd on that land?

A. No, sir.

Q. Do you know where Mr. Boyd lived during these years?

A. I always met him at Cora. He had a home at Cora. That is where I saw him.

Q. Do you know of any improvements made on this land during that time?

A. Yes, sir.

Q. What did they consist of?

A. A small house and something like an acre fenced. The house was built some time—I couldn't tell you the date it was after July or the first year after I homesteaded. That was in 1900.

Q. Do you know absolutely that the house was built in July?

A. It was after July.

68 Q. What caused you to go on the land to see what had been done?

A. There was another party went with me to

see what had been done. It was after the expiration of six months that I noticed that there was a building on it. I went on the land but I noticed there was nothing done. I noticed some blazing—

Q. Was there any land cultivated?

A. I could not be positive, but it was some time after the building was put up. There was something like an acre put it.

Q. Was there any cotton planted?

A. Yes; a part of it, perhaps an acre.

Q. Who built this house?

A. I do not know.

Q. Who fenced this land?

A. I do not know.

Q. Who planted this crop?

A. I do not know.

Q. Was you away from home when this building was put up?

A. No; it just happened that I did not see it.

Q. Can you see this land from where your house is?

A. No; there is small stream running between and some timber on it.

Q. How frequently would you go on this land?

A. I could not tell.

Q. Just estimate it?

A. Perhaps once a month or more than that—I could not say. Perhaps I went on it twenty times a year, may be more than that; I could not say. A man is very certain to go on part of the ground near this place and not take note of it. Frequently I was on it.

Q. I believe you stated you never saw Mr. Boyd on this land at all?

A. No, sir.

Q. Mr. Smith, did you know Nat Wasey?

69 A. I would recognize him when I met him, but I did not know him.

Q. You know him by sight?

A. Yes, sir.

Q. Was Nat Wasey in your neighborhood during the years that I mentioned?

A. Why, certainly, that was about the time he was in there, principally.

Q. What was his occupation at that time?

A. I do not know.

Q. What did he do?

A. From his appearance and from his actions, it seems that he was concerned in the timber business—from inquiries he made regarding land and went on to some, but it seemed that he was no doubt in the land business, but it never came to my personal knowledge. It was my impression—

Objected to by Mr. Monroe, on the ground that the witness was not qualified to give an opinion and that it was not the best evidence.

A. Nat Wasey was a very unpleasant man with me and I could hardly endure him. He was not a sociable man but he treated me very kindly at times. I do not think you can get any information from me that would be legal.

Q. Do you know for whom Nat Wasey was working?

A. No, sir.

Q. He never made any statements to you?

A. No, sir; not in my recollection.

Q. Was he born and raised in that neighborhood?

A. No, sir.

Q. When did he first come in to that neighborhood?

A. I could not say, exactly.

Q. About when did he come into that country?

A. It is hard for me to remember. I could not say. I am impressed with the idea that he was there about ten or twelve years ago. He was there perhaps ten or eight years ago.

Q. How long did he continue there?

70 A. He was there, I suppose, three or four years, there or thereabouts. He was in and out.

Q. Do you remember when he left after that hail storm?

A. I could not give the date.

Q. Give the year, about; approximate it.

A. It is my recollection, something like four or five years ago that he left there. I passed the road where it happened. I do not know whether the hail beat him or some one beat him.

Q. Mr. Smith, have you ever known any one to live on that land since 1899?

A. I have not.

Q. Has any one ever made any cultivation or improvements other than those you have mentioned?

A. No, sir.

Q. Did you examine this house that was on the land?

A. I was around it at different times.

Q. Just describe it?

A. I never measured it with a rule, but the house, I think, twelve by fifteen if I remember it.

Q. What was it made of? Just go ahead and describe it, whether it was made of wood or stone—how it was painted and painted, etc.

A. It was to the best of my recollection, 12 by 15 feet, and it had a door in each end, or a hole for a door and no shutter to it, and the furniture was an old plow that he plowed the little particle of ground with. The plow was there and it might be some other stuff. I remember the plow, and if there was any gear or harness I do not remember it.

Q. Was there any household furniture?

A. There was no furniture, whatever.

Q. Were there any windows in the house?

71 A. There were holes.

Q. Were there any sashes?

A. Nothing but holes. If there were any shutters they were common shutters. I suppose they might have had facing above.

Q. Was there any stove in the house?

A. I didn't see nothing.

Q. Any facilities for cooking?

A. Not to my recollection.

Q. Anything else?

A. No, sir.

Q. Any pots or cooking utensils?

A. I do not remember seeing any.

Q. Is that house on the land now?

A. No, sir.

Q. What has become of it?

A. I could not tell you.

Q. Do you know whether Mr. Boyd is married or single and has he any family?

A. He has a family.

Q. Where does his family reside at the present time?

A. At Cora.

Q. Where did they reside during the years 1899 and 1900?

A. I do not believe he was married at that time.

Cross-Examination.

By Mr. Monroe:

Q. That was two or three years ago that you examined that house?

A. I saw the house and looked at the house immediately after it was built, some time in the fall of the latter part of the year 1900. To tell you how long the house remained there after that, I could not fix the date. It was in 1900 as I remember right.

Q. When was it you examined it, critically?

A. Well, it was in that year after he erected it. I could not help seeing it.

Q. What character is that land, is it all timber  
72 land?

A. Yes, principally.

Q. Between your house and that house there is timber, is there not?

A. There is a small timbered stream there and what you would call bottom timber and underbrush.

Q. And on either side there is a swamp?

A. Yes, sir.

Q. In order to get from your house to this place, you have to go through some swamp and some underbrush?

A. Yes, sir.

Q. When did you first miss this house?

A. I did not jog my memory. As I stated, it was built that year in the early part of 1900. I suppose the house was there 12 months after, I could not say.

Q. You would not be able to state under oath how long that house was there?

A. No, sir.

Q. When you walked over there the first time, it was not completed?

A. I would not consider it completed. The plowing had all been done.

Q. And the plowing had all been done—you said there was a crop planted?

A. Yes; I suppose it had been planted, I do not remember.

Q. How do you fix the years definitely? You are more or less guessing. Supposing I got on the stand and swore this all happened in 1898?

A. I have all the records in my favor. I could not make a mistake in regard to the building of the house.

Q. How do you fix that date with so much certainty—what record have you?

A. I can very readily get the record from the land office.

Q. But you have not got the record here now?

A. No, sir; I can give you other reasons. The party that I went with to this place, I know his age, and it is from his age that I am making this statement.

73 By Mr. Mitchell:

Q. Just give his name, what was it?

A. Well, I do not know about that, now. I was not—I do not think—

By Mr. Young:

Q. Why do you object to giving his name?

By Mr. Mills:

Q. Just tell it right out, give his name.

A. Well, as far as the name is concerned—

By Mr. Mitchell:

Q. Well, we want to know the name of this young man who was interested in getting the homestead?

A. In the first place, I stated to you a while ago that I went with this party to the land office—

By Mr. Mitchell:

Q. Well, who is this man?

A. He is my own son. Previous to his coming of age he had done some work on this land, a year or so before, just previous to his coming of the age of 21. I went with him to the land office and he was informed that this land had been taken up by Mr. Boyd.

Objection made to what the registrar said, on account of hearsay.

Q. Now, as a matter of fact, Mr. Smith, prior to your son's arriving at the age of majority he conceived the idea that he wanted to enter this particular piece of land and had done some work on it?

A. Yes, sir.

Q. And you have gone with him to the commissioner to see if this was public land?

A. Yes, sir.

Q. You found that it had been entered?

A. Yes, sir.

Q. You are not interested in setting aside this title?

A. No, sir.

74 Q. Your son is not interested in this now?

A. No, sir.

Q. How long was it after you was informed by the land office that this land had been entered, that you went upon it to see if any improvements had been made?

A. I stated to you in the commencement that I was on the land frequently and that it was in July that I was on the land after the homestead had been made in July. After the expiration of six months I was back on the land and there had been nothing done, and it seemed that this gentleman became somewhat excited, and he asked me if I was going to contest it, but I went on to tell him it would not be contested.

Q. You are a minister of the gospel, licensed, ordained by the baptist church to preach, and you went there and looked over the improvements that were placed on this land?

A. I stated that?

Q. Well, I am asking you the question?

A. Yes, sir.

Q. You say that there was a long cabin?

A. I did not say there was a log cabin, it was built of lumber.

Q. Was it covered with boards?

A. Yes; as I recall it, the body of the house was built of lumber and covered with boards.

Q. There were doors and windows?

A. No, sir; there were openings in the house.

Q. Did you say there was an opening for the door?

A. Yes, sir.

Q. And openings for windows?

A. No, sir; there was an opening for doors in each end.



Q. Did the sills of the house rest on the ground or on blocks?

A. On blocks.

Q. Was there a well?

A. I never saw one.

75 Q. Did you look closely to see if there was a well?

A. No, sir; I did not look.

Q. In other words, you went there to criticise—you went to find that there were no improvements?

A. No, sir; I cannot say that.

Q. You did not expect to see any improvements?

A. I could not say that, really.

Q. How long have you lived in Vernon Parish?

A. I have lived in Vernon Parish at the place where I am living now, ten years. I lived in Vernon Parish at another place thirteen years, and I lived in that community fifty years. I was in Rapides and Vernon fifty years.

Q. You are not much over fifty, are you?

A. I am fifty-six.

Q. So you have been practically reared in Vernon?

A. I was really twenty-one years old when I went out of Rapides into Vernon.

Q. What section do you live on?

A. I live on Section 14.

Q. What township and range?

A. 2-5.

Q. The counsel for the plaintiff had a description and asked you if you knew where it was and described the South 1/2 of the S. W. 1/4 of Sec. 14, Town. 2, North of Range 5, West Louisiana Meridian.

Q. What do the corner posts look like in that section?

A. There are trees, witness trees, blazed.

Q. What do the witness trees look like on the corner posts of that section?

A. They generally take a pine knot or a limb—something that will endure as long as possible. They mark the trees.

Q. Now, describe the witness trees on the corners of that section?

A. Why, the trees—I don't know exactly.

Q. Now, you say you know where those trees are, now describe the corners of this section?

A. Well, I never made it a point to examine them very closely.

Q. Well, how did you locate the quarter section?

76 A. Well, from the staubs and blazes and the original line.

Q. The line that you speak of is the surveyors line that runs through the woods for miles and miles. Now, how did you know when you got to the section line?

A. That land is very easily described, for the simple reason that it borders another section on the west, and it also borders another on the south. There is the burned trees on each corner of the section.

Q. How old is your son, Len, right now?

A. He is twenty-eight years old, that is my recollection.

Q. When was he twenty-eight?

A. He is not quite twenty-eight. He will be twenty-eight this month.

Q. You said you were ordained?

A. Yes, sir; in the Baptist church.

Q. When was you ordained?

A. I was ordained on the 24th day of September, 1876, that is my recollection.

Q. By whom?

A. By a presbytery of qualified elders in Rapides.

Q. Will you give the names?

A. Yes, sir; there were four of them, W. D. Gardner, who died at Oakdale; J. E. Duff he has gone to Texas; W. M. White, dead also; and J. H. Brunson.

Q. Since 1776 or 1876 you have had other occupations than being a minister—you have had a saw mill, run a country store and been a farmer?

A. Yes, sir; I have farmed some and run a country store, a little shop, not much.

Q. Are you still running that shop?

A. I have a few articles, yes.

Q. They tell me, Mr. Smith, that you cut some timber before you made your entries.

(Counsel for plaintiff objects to this question on account of incrimination.)

Q. Was there any charge ever brought against you for this?

(Same objection as before noted.)

Q. Have you any criminal record?

Q. Ever been indicted for perjury, larceny, etc.?

77

A. Never had a charge brought against me nowhere nor in the church.

Q. How long has it been since you preached any?

A. As far as that is concerned I have filled my appointments regularly. I have the care of three churches and that takes nearly all of my time.

Q. That is all you can spare from your mill and store?

A. Well, I have not run the mill for some time, that has about broke me.

Q. Do you know Richard Henderson?

A. Yes, sir; I have seen him.

Q. Do you know Russ Bond?

A. Yes, sir.

Q. They both live in Vernon Parish?

A. I do not know. I have not seen him for quite a while.

Q. When was the last time you saw him?

A. Three or four years ago, perhaps longer—I do not remember.

Q. When was it you went on that land with your son Len?

A. It was in the month of July, 1900.

Q. What time of day was it?

A. In the morning.

Q. Before noon?

A. Yes, sir.

Q. Where did you come from?

A. Come off of the land that was my home.

Q. Where did your son come from?

A. He did also.

Q. Did you go direct?

A. Yes, sir.

Q. Had you been on it before?

A. Yes, sir.

Q. Did you see these improvements before?

A. No, sir; they were not there then. They were not there when I went with him. I stated that the homestead was made in January and that the improvements were not made until July.

Q. These two quarter section comprise the tract of land

which is a quarter of a mile long and half mile wide, and that land is wooded with scrub growth?

78 A. No, sir; that steam [stream] that runs through between that land and my home has some brush on it.

Q. And that land has nothing on it at all?

A. Pine timber.

Q. Well then, when I said wood brush and timber was I correct?

A. You had reference to this stream?

Q. What I wanted to get at was that it was pine timber?

A. Yes, sir; any way pine timber is wood land.

Q. None of this land is clear?

A. I could not call it clear.

Q. Now are you prepared to swear that you walked over every portion of this land and a quarter of a mile and a half a mile long?

A. No, sir.

Q. What were you doing there?

A. I went there looking for my stock because they went through this land.

Q. What I want to get from you is this, are you prepared to swear that you walked over this with your son, every bit of this eighty acres of land, and that land is wood land?

A. I would not swear to this, it is covered with wood, and on a average it is pretty well timbered. It did not concern me enough to go over every particle of it.

Q. You did not see the people putting up that house at all—did you hear them?

A. There was a great deal of noise going on. I did not put myself to the trouble of paying any attention.

Q. Have you any younger sons?

A. Yes, I have some little boys.

Q. In the years 1900 and 1901 did you have some little boys?

A. Yes, sir.

Q. How did it happen that you went after the cows instead of sending them?

A. It is not reasonable to suppose that we would send small boys off in the forest.

79 Q. You had one boy twenty years old—was you afraid he would get lost?

- A. He went sometimes.  
 Q. How many other children have you got besides Len?  
 A. Six others. They are younger.  
 Q. Where is your store located?  
 A. In Section 14.  
 Q. At your home?  
 A. Yes, sir.  
 Q. Where is your mill located—same place?  
 A. Yes, sir.  
 Q. Where is the church?  
 A. Leander and Slabtown on the Santa Fe—one below and one above.  
 Q. How far is Slabtown from Section 14?  
 A. I could not say—I could sort of make a guess.  
 Q. Do your best?  
 A. I suppose on a line it is about fifteen miles.  
 Q. And how far is Leander?  
 A. It is in Section 14.

#### Redirect Examination.

By Mr. Mills:

- Q. Your land joins this land on the south?

(Objected to by Mr. Monroe as leading.)

- Q. Where is your land located in regard to this land?  
 A. In the same section.  
 Q. Is there any land between?  
 A. No, sir.  
 Q. Your land that joins this land?  
 A. Yes, sir.  
 Q. You know the lines of your own land?  
 A. Yes, sir.  
 Q. There is some difficulty in finding the measurements of the government surveyors, is there not?

(Objected to by Mr. Monroe as leading.)

- A. You can very readily in certain localities find stumps and trees?

- Q. State whether you located this land with reference to your own land or by these stumps?

(Objected to by Mr. Monroe as leading.)

A. It is very easily done. The staubs are all noted, and the lines are all noted. A person that is familiar with the side lines can easily take these.

#### Recross-Examination.

By Mr. Mitchell:

Q. Mr. Smith, how many homesteads have you had occasion to examine as to the amount of the improvements placed there at the inception of the entry since you have been living in Louisiana?

A. I have never given a great many of them a critical examination, but I have passed and been in the neighborhood of a great many of them.

Q. Now is it not a fact that the improvements placed upon the average homestead is [in] Southwest Louisiana is not superior to the improvements you find on those homesteads in other states?

(Objected to by Mr. Mills as a matter of opinion.)

A. Yes, sir; you are about correct.

Q. What portion of Section 14 do you live on?

A. I live on the S. E. quarter of the Section 14.

Q. This soil of the land in question is not particularly fertile or adapted to cultivation?

A. No, sir.

Q. Could a man without means who homesteaded that tract of land earn a livelihood for himself and family by cultivating that soil at the inception of his entry—can a man take a strip of land, build a house, and earn a living without doing something else?

A. There would certainly have to be for a little time some resources, elsewhere, but after he establishes himself and fertilizes the land it would be productive.

Q. In the first place an entryman of such a piece of land would have to build a house in which to live. He would then have to clear and fence his land—it is timber land, is it not?

A. Yes, sir.

Q. And he could not in the first year of [or] first two

years, however thrifty or industrious he might be, earn a livelihood on such a piece of land?

81 A. It would not be much a livelihood.

(Signed) M. SMITH.

82 J. D. WILSON, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. Jefferson D. Wilson.

Q. What is your occupation?

A. I am a farmer.

Q. Where do you live?

A. Near Leander—about a mile.

Q. What parish?

A. In Vernon Parish.

Q. Do you know Elijah Z. Boyd?

A. Yes, I am acquainted with him.

Q. How long have you lived in the vicinity of Leander?

A. 12 years.

Q. How long have you known Mr. Boyd?

A. I have known him ever since he was small.

Q. Where was he born and raised?

A. Well, since I have known him he has resided here near Cora. I do not know where he was born.

Q. Do you know where Michael Smith lives?

A. Yes, sir; he lives at Cora—he is postmaster.

Q. How far is Cora from where Mr. Smith lives?

A. I suppose it is three or four miles, to the best of my knowledge.

Q. What does Mr. Boyd do for a living?

A. I do not know what he is doing now—he did run a mill for awhile.

Q. What was his occupation in 1899, 1900 and 1901?

A. He farmed some and ran a mill near Cora.

Q. Did he have a place of his own?

A. I could not tell you that. He was living there, but whether he owned the place I could not say.

Q. With whom did he live?

A. I do not know whether he was married then or not. Could not say.

Q. Do you know whether or not he ever made any homestead entries?

A. I was told—

(Objected to on the grounds that the best evidence is the record itself.)

A. I am informed that he made a homestead near Leander.

Q. Where is this land with relation to the home of Mr. Smith?

A. Adjoining his.

Q. When was it that you were on that land?

A. I was on it very often when—I was on it I expect once a month and passed by.

Q. That was during what years?

A. I could not give the date, but while it was claimed that he had it as a homestead.

Q. How far was this land from where you live?

A. A mile and a half.

Q. Were there any improvements on this land?

A. There was a little house, maybe 12x14, I guess.

Q. Do you know when it was built?

A. I do not.

Q. When was the first time you ever saw it?

A. I do not remember that.

Q. About when?

A. I guess about the first time I ever remember seeing it was in July or August, I recollect it was August of the year he homesteaded it.

Q. Do you remember what year that was?

A. I do not, I never paid any attention.

Q. Now just describe this house?

A. Well, the house was a little board house, I suppose about 12x14. I passed there several times, but I can't remember whether it was finished or not.

Q. Did you ever go inside of it?

A. I looked inside of it.

Q. Was it furnished?

A. All I saw was plow tools.



- Q. How many rooms were there?
- 84 A. There was not more than one room.
- Q. Did you see any furniture of any kind?
- A. I do not remember any furniture. I could not say that there was not.
- Q. What was there to keep you from seeing it if there had been any there?
- A. Nothing.
- Q. Was it daylight or dark?
- A. It was light inside.
- Q. What was to prevent you from seeing what there was inside of the house?
- A. There was nothing to prevent me, but I do not remember that there was anything else except the plows. I did not say that there was not anything else in there. The only thing I remember was the plows. I did not see anything else.
- Q. Now about this time how often were you on this land?
- A. Maybe as much as once a month.
- Q. Did you ever know of anyone living upon this land?
- A. No, I never saw anyone living at the place.
- Q. Did you ever see Mr. Boyd?
- A. No, sir; but he may have been on the land at some other place.
- Q. Did you ever see him in that vicinity?
- A. I may have met him that vicinity or in the postoffice. I do not know whether I have met him there or not.
- Q. Did you ever see him working on this land?
- A. No, sir.
- Q. Did you ever see any fence or cultivation?
- A. There was a little fence about an acre of rail fence. I hauled fence away from there sometime in 1901; I was told to haul it away.
- Q. Who told you?
- A. Mr. Perkins.
- Q. What was his full name?
- A. Henry Perkins.
- Q. Why did he do that?
- A. I do not know.
- Q. To what other place did you haul it?
- 85 A. I hauled it to where I was living.
- Q. What did Mr. Perkins have to do with this land?

A. I could not tell you.

Q. Did Mr. Boyd ever make any complaint to you about these rails being hauled away?

A. No, sir.

Q. Do you know whether this house is still upon the land?

A. I do not.

Q. What became of it?

A. I could not tell you that.

Q. When was the last time you saw it?

A. I could not tell you—I could not give you any idea. It must have been as much as two or three years ago, maybe longer.

Q. Was any part of this land cultivated?

A. I never saw anything growing on it.

Q. Was any part of it ploughed?

A. I think there was a little spot.

Q. How long after the time when Mr. Boyd was reputed to have entered it?

A. It was in the fall after he was reputed to have made his entries.

Q. Was any crop ever raised there?

A. I never saw one.

Q. Were you upon the land the following year after it was ploughed?

A. I have been on the land two or three times a year since he homesteaded it.

Q. Have you ever seen the land ploughed since then?

A. No, sir.

Q. Have you ever seen any crop?

A. No, sir.

Q. Have you ever seen or known of anyone living there?

A. No, sir.

Q. When was Mr. Boyd married?

A. I do not know.

Q. Do you know Nat Wasey?

A. I have met him; yes, sir.

86 Q. Was he ever in that neighborhood?

A. Yes, sir.

Q. When did you first see him in that neighborhood?

A. I could not tell you.

Q. Was he there before this entry was made?

A. I could not tell you that. I do not know when I saw him first.

Q. About when? Near the time you saw this house on the land?

(Objected to by Mr. Monroe as leading.)

A. I will try to think and see if I can remember; it must have been along six or seven years ago.

Q. What was he doing in the neighborhood—what was his occupation?

A. To the best of my knowledge he was in the land business.

Q. Do you know by whom he was employed?

A. No, sir.

Q. What do you mean by land business?

A. He seemed to be looking after land. I have heard of him buying land, but I never asked him what his occupation was.

Q. Is anyone living on that land now?

A. No, sir.

Q. Have you ever known of anyone living there?

A. No, sir; not on that tract of land.

Q. What direction is your home from this land?

A. Very near east.

Q. What occasion do you have to go close to this land in question?

A. I have some stock out in that country.

#### Cross-Examination.

By Mr. Mitchell:

Q. Where did your stock range?

A. They ranged out in the forest, went all around in the woods. I have some sheep in that country; I found some of them I suppose on that land. I saw it as I came to town.

Q. Do you know who built that house?

A. I do not.

Q. There was a house built there?

A. There was as I stated.

87 Q. Now have you ever taken occasion to go to the corners of this land?

A. I do not remember that I ever have since he homesteaded, but I went there several times before that.

Q. When you were going to the corners before that were you contemplating homesteading it?

A. I was. I was looking for a homestead myself, but I never got any.

Q. Did you ever have any personal difference with Mr. Boyd?

A. No, sir.

Q. You would be very glad to have this homestead, wouldn't you?

A. I do not want to defraud him at all.

Q. But if it was set aside you would like to have it?

A. I would like to have 160 acres if I could get it.

Q. Do you know these parties, Richard Henderson and Russ Bond?

Q. They live in the community, do they not?

A. I do not know where they live now.

Q. Did they not live there in 1901?

A. I could not tell you.

Q. You would not say they did not?

A. No, sir. I think maybe Mr. Bond did live there.

Q. Were you living in that neighborhood in 1901?

A. I moved right on the place where I am living now in January, 1901.

Q. You know Mr. Boyd, do you?

A. Yes, sir; he and I are very good friends.

Q. Do you know Mr. Smith, who testified here a few minutes ago?

A. Yes, sir.

Q. Do you belong to his congregation?

A. No, sir.

Q. Did you ever belong to his congregation?

A. Yes, sir.

Q. How did he stand as a minister of the gospel in that community?

(Objected to by Mr. Mills.)

A. He stands fair as far as I know, I never heard anything to the contrary.

Q. Does he devote most of his time to the mercantile business, or to ministering to the wants of his church?

88           A. I could not tell you that, I am not with Mr. Smith always. He is running a little mercantile business there, but I think his son does the work there.

Q. Was there any public land in that vicinity?

A. I do not know of any.

Q. Did you know that Mr. Smith's son tried to enter this same land?

A. I knew he was contemplating entering it.

Q. And you were contemplating entering it also?

A. Yes, sir; but I was too slow.

By Mr. Young:

Q. When you hauled those rails away from that land, when was it, when final proof was made afterwards?

A. I do not know, I suppose it was afterwards, I think it was in 1901.

Q. After final proof was made?

A. I do not know when final proof was made, but suppose it was afterwards; otherwise they would not have disposed of the rails.

(Signed)       J. D. WILSON.

89           W. A. WINFREE, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Mills:

Q. What is your name?

A. William Alfred Winfree.

Q. How old are you?

A. Forty-four years according to the family record.

Q. What is your place of residence?

A. My postoffice is Hawthorne.

Q. How long have you lived there?

A. I have been there steady for between ten and twenty years. I was raised there on the old place below me. One year I lived in Lake Charles.

Q. What was your occupation in 1898?

A. I was at work in the sheriff's office in Vernon Parish at Leesville.

Q. What was your occupation in 1899?

A. I was still at work there in the sheriff's office.

Q. What was your occupation in 1900?

A. I went to work in the clerk's office sometime in the spring.

Q. In what capacity?

A. Deputy clerk.

Q. Who was clerk at that time?

A. J. J. Hicks—was elected in 1900.

Q. Where did you work in 1901?

A. In the clerk's office.

Q. Where did you work in 1902?

A. In the clerk's office—and part of 1903, is my recollection.

Q. Did you know Nat Wasey?

A. Yes, sir.

Q. When did you first see him?

A. I do not remember, but I think sometime in 1898, and on then for several years.

Q. Do you remember just when he left?

A. No, sir; I do not.

90 Q. During the time you were employed in the clerk's office how often would you see Nat Wasey in the office?

A. He had no regular time that I know of to visit Leesville. I would sometimes see him there once a week, and from then I would not see him for probably two months.

Q. What business would he have in the clerk's office?

A. He usually would bring deeds and file certificates and make affidavit before the clerk sometimes, and then would bring matters for the Wight-Blodgett Co., Ltd., and then he would instruct whatever instructions he wanted to give concerning them.

Q. What instructions would he give?

A. Sometimes one, sometimes another, is my recollection.

Q. By whom was the clerk's office paid for matter and papers filed by Mr. Wasey?

A. By the Wright-Blodgett people.

Q. To whom would the clerk's office send their bills for these papers?

A. My recollection is all the deeds that were ever filed there and recorded for the Wright-Blodgett people were sent

to them at Lake Charles and they would return a check covering the fee bill.

Q. Do you remember how these checks were signed?

A. I do not. It was in payment for the deeds that were recorded for the Wright-Blodgett people. I think most of the time they were signed by Mr. Kelly or Mr. Dickens, probably all the time.

Q. Did Mr. Wasey ever make any statement to you as to who he was employed by?

(Objected to on the ground that it is hearsay and is an admission beyond the authority of the agent.)

A. As I stated a while ago I do not remember the exact language that he used, but he told me he was representing the Wright-Blodgett people who had an office at Lake Charles here, which I think was the first statement that he ever told me, and then gave me his instructions.

91 It was understood that the same objection apply without repetition to this entire line of testimony.)

Q. During the time Nat Wasey was having the deeds filed and certificates and other papers filed in the clerk's office at Leesville did he ever give you any other instructions in regard to these papers about sending them to any other party than the Wright-Blodgett Company?

A. I do not think he did—that is matters that belong to the Wright-Blodgett people.

Q. Did he ever file other papers?

A. I do not remember. I presume he did. I presume sometime other people would send deeds by Mr. Wasey.

#### Cross-Examination.

By Mr. Monroe:

Q. My understanding of your testimony is that you are not prepared to swear that any of these conversations or transactions with Mr. Wasey took place prior to the year 1901?

A. No, sir; I do not remember what time Mr. Wasey ever told me what he was doing.

Q. What time was it he had that conversation with you and told you about his employment?

A. As well as I remember it was about the first time I saw him after I had seen him in Lake Charles several years before. When I saw him there I asked him what he was doing there.

A. As I understood your testimony you are not prepared to swear that any payment was ever made for any recordation of anything else by a check signed by the Wright-Blodgett Company?

A. I do not remember. The checks would be returned signed, that is, the check covering the fee bill. The checks were good and any bill that was sent to the Wright-Blodgett Company was paid that I have any knowledge of. I do not think Mr. Wasey ever paid a bill, though I do not recollect.

Q. Mr. Wasey recorded deeds for other people beside Wright-Blodgett?

A. I would not say positively. He might have, 92 I really presume he did, but I do not recollect a single one that he ever carried there.

Q. I believe I asked you a while ago and you told me that you had never asked Mr. Wasey who he was employed by?

A. I do not know as I ever came out and asked him the whole particulars; when I first saw him I asked him what he was doing there, but I don't know in what kind of language or anything else, but I took it for granted that he was doing what he said and by his bringing these papers that that was what he was doing. I did not know anything about what he was doing or did not care further than I was just helling with him as a fellow will do when you have not met a man for a year or two.

Q. You say you do not remember just what Mr. Wasey told you then and do not remember just what he did tell you. Are you sure it was Mr. Wasey, or maybe it was somebody else?

A. No, sir; I remember asking Nat Wasey when he began to come up there what he was doing. I was not concerned and had no interest in what he was doing. I just asked him and a person would naturally have to draw upon his imagination in order to remember all about it.

(Signed) W. A. WINFREE.

(The same agreement was made between the attorneys on both sides as with the testimony of John Johnson with reference to all but the Hicks case.)



JOHN JOHNSON, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. John Johnson.

Q. Where do you live?

A. In Vernon Parish, Fifth Ward, near Craven P. O.

Q. How far is that from Leesville?

A. About 25 miles.

Q. How long have you lived there?

A. I think I have been there sixteen years last fall.

Q. About how old are you?

A. I will be thirty-five years old Monday next.

Q. Did you ever know a man named Nat Wasey?

A. Yes, sir; I know him, or did.

Q. When did he first come into that country?

A. I could not tell you how long long it has been.

Q. About how long?

A. He was there along about seven years ago—he was there, I am pretty sure, I could not say positively, but that is my recollection.

Q. Did you ever have any dealings with him?

A. I sold him a piece of land while he was there.

Q. What kind of land?

(Objected to by Mr. Monroe as irrelevant.)

Q. What kind of land was this you sold him?

A. It was timber land.

Q. What kind of timber?

A. Part of it was good heavy open and part of it was along a little creek—a swamp with a creek on one edge.

Q. Did Mr. Wasey make any statement to you as to for whom he was purchasing this land?

(Objected to by Mr. Monroe on the ground that it is hearsay or if it is to be construed as an admission by an agent it is beyond the scope of his authority.)

94 A. I think he told me he was buying for the Wright-Blodgett people.

Q. Do you just think that or are you sure?

A. Well, I would not be sure, but I think he told me he did.

Q. Do you remember to whom the deed was made?

(Objected to by Mr. Monroe on the ground that the deed is the best evidence.)

Q. Well, I would hate to say positively that I do know, but I returned my deed. I never had it recorded to Mr. Wasey and told him to make his deed and have recorded and I could not tell you whether it was to him or the Wright-Blodgett people. I could not positively say.

Q. Do you know of any other land that Mr. Wasey bought in that neighborhood?

Q. No, I could not said [say] that I know that he did buy any, but I was told that he bought some.

Q. Never mind what you heard about it.

Q. Have you ever been indicted?

A. Yes, sir; I reckon so.

Q. What have you been indicted for?

A. I was indicted for getting a row with an old gentleman at his place long years ago, but I was nothing but a boy like.

Q. On what charge?

A. For swearing and cursing and using obscene language near a residence.

Q. Were you ever arrested on any other charge?

A. No, sir.

(Dictated by Mr. Mills:)

It is agreed between counsel for both sides that the above testimony of John Johnson is to be added to each one of the cases covered by this submission except, 385, the United States of America vs. Henry L. Hogan, et al., and in that agreement it is understood that the signature of this testimony is waived in all the cases except the present.

his  
(Signed) JOHN X JOHNSON.  
mark

I attest to this signature.

FRED W. PULLIAM, Stenographer.

85

95 JAMES A. HEARD, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

- Q. What is your full name?
- A. James A. Heard.
- Q. How old are you?
- A. Thirty-seven.
- Q. Where do you live?
- A. At Slabtown, Vernon Parish.
- Q. How long have you lived there?
- A. Since 1891.
- Q. What is your occupation?
- A. Farming.
- Q. Did you live there in 1899, 1900 and 1901?
- A. Yes, sir.
- Q. Did you know at that time a man named Nat Wasey?
- A. I did.
- Q. Where did he live?
- A. Brushy Creek.
- Q. How far from you?
- A. Eight miles.
- Q. What was his occupation at that time?

(Counsel for defendant requests the examiner to charge this witness that in this testimony that he is to testify not as to anything he may have heard or been told, but exclusively as to things which have come within his own personal knowledge.)

(Counsel for plaintiff objects to any instructions being given by the examiner for the reason that under the order of reference the examiner has no authority to pass upon a competency on [or] incompetency of evidence and that such an instruction would be equivalent to passing upon the competency or incompetency of evidence.)

By Mr. Jackson, Special Examiner:

The request is refused for the reason given by the counsel for the government.)

- Q. What was his occupation in 1899, 1900 and 1901?

A. He was buying timber.

Q. How do you know that?

A. By seeing what he was doing.

96 Q. You know that then of your own personal knowledge?

A. I do.

Q. Saw him buying for himself or someone else?

A. For the Wright-Blodgett Company.

Q. How do you know that?

A. The deed was transferred.

Q. Do you know that of your own personal knowledge?

A. I do.

(Mr. Monroe objects to the last answer on the grounds that it is not the best evidence.)

(Signed) JAMES A. HEARD.

(It is agreed that the above testimony of the witness in regard to Nat Wasey is to be incorporated in the transcript of the testimony of all the cases except those of William Hester and Krause & Mangham.)

97 In United States Circuit Court, 5th Circuit, Western District of Louisiana, at Shreveport.

United States

vs.

No. 364.

E. Z. Boyd and The Wright-Blodgett Company, Ltd.

J. B. Monroe, A. S. Mitchell, Counsel for Defendant.

M. C. Elstner, U. S. Atty., E. P. Mills, Assistant, Counsel for Gov.

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99 In U. S. Circuit Court, Fifth Circuit, Western  
District of Louisiana, at Shreveport.

United States

vs.

Case No. 364.

E. Z. Boyd and The Wright-Blodgett Company, Ltd.

It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken.

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### TESTIMONY OF MR. A. G. WINFREE.

Mr. A. G. Winfree, witness on behalf of government, having been duly sworn, testified as follows:

#### Examination.

By Mr. Mills:

It is admitted that the witness is clerk of court at Leesville in the Parish of Vernon, and that the conveyance records of that parish are in the custody of his office.

1. Mr. Winfree, do you know whether or not this is a correct copy of a deed from E. Z. Boyd to the Wright-Blodgett Co., Ltd., of date June 21, 1901, as on record in your office?

Yes, sir; it is from the record.

2. What do you mean by "from the record"?

I mean from the record in the office.

3. Do you mean from the original deed or from  
100 the Conveyance Book?

From the Conveyance Book, as shown by my certificate at the bottom of the deed.

4. Is it the custom of your office to record all conveyances in the Conveyance Book as soon as filed?

Yes, sir.

5. And the Conveyance Book is the official record of the parish and its transactions?

Yes, sir.

6. Do you know whether the original deed is on file in your office?

I cannot say positively, but I do not think it is.

#### Cross-Examination.

By Mr. Monroe:

1. Did you make that copy?

It was made by one of my deputies.

2. Did you check it against the Conveyance Book personally?

I did not. It was checked by my deputies.

(Counsel for government asks that deed be filed and marked "Exhibit A" in Case No. 364.)

101 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

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#### TESTIMONY OF A. G. WINFREE.

Mr. A. G. Winfree, a witness in behalf of complainant, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Elstner:

1. Did you know Nat Wazey?

I did.

2. State whether or not in connection with the Wright-Blodgett Co., Ltd., he exercised a general supervision over the purchase of lands in their interest.

I do not know of my own knowledge. I can state that I recognized Mr. Wazey as such. It was so understood throughout the community and I so understood that he represented the Wright-Blodgett Co., Ltd.

3. From what circumstances that came under your personal observation were you led to the conclusion that Nat Wazey represented The Wright-Blodgett Co. in the investigation of lands and in securing their purchase? State your personal observations, conduct of Mr. Wazey, what he did and all you know about it. Well, at the time Mr. Wazey was buying lands in Vernon Parish I was running a livery stable and at the times when he would come to Leesville he would stop with me; consequently we became well acquainted and I knew at the time that he was purchasing lands throughout the parish by various conversations and transactions I had heard of, but still I don't know that I was ever a witness to any transaction he made for these people. It was only current talk throughout the community.

(Counsel for defendant objects to above testimony on the ground that it is mere hearsay).

4. State whether or not Mr. Wazey informed you of the purchase of any lands that he had made for the Wright-Blodgett Co.?

I cannot answer that question. I do not really know of any particular instance. It is too far back to remember.

5. Do you know whether or not from any statement he ever made to you that he represented himself as the agent of Wright-Blodgett Co. in the purchase of lands?

No, sir; I really don't know that he did.

6. Did you ever see him at Leesville acting in the capacity of attesting witness in any of these purchases that appear on record in this case?

I did not. I was not in position to know those facts.

7. Do you know where Mr. Nat Wazey lived?

I am of the opinion that he lived in the southeast portion of the parish.

8. How far from Leesville?

About 25 or 35 miles. I was never at his place and really do not know that he had a place; only I know that he spoke of his family down there.

9. About what is the distance from Leesville to Lake Charles?

About 70 miles.

10. Did Mr. Wazey, or did he not, have any business occupation in the Town of Leesville?

None that I know of.

11. Did he have any mercantile establishment or office in the Town of Leesville?

Not to my knowledge.

12. How often would you see Mr. Nat Wazey in the Town of Leesville?

I can't remember, but he was there frequently. Possibly weekly; I don't know for certain.

13. You did not see him there often enough to suggest that he was engaged in any permanent or daily business in the Town of Leesville?

No, sir. If he had any business connections in the Town of Leesville I was not aware of it and am not aware of it at the present time.

14. You live in Leesville?

All of my life.

104 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.



## TESTIMONY OF A. N. MAYO.

A. N. Mayo, a witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Elstner:

1. Mr. Mayo, did you know Nat Wazey?

I did.

2. Do you know whether he is living or dead?

I heard some year or two ago that he was dead.

3. Has there ever been a succession of Nat Wazey open in the Parish of Calcasieu?

I believe not, for I have a record of all probate matters in my office and I cannot recall now of having seen such probate proceedings.

4. Do you know that several years ago Mr. Nat Wazey left the Parish of Calcasieu and was supposed to have been taken to a sanitorium?

It was current report at Lake Charles.

5. How long had you known Nat Wazey prior to his leaving Lake Charles?

Must have been 10 to 14 years.

6. During the latter part of his residence in Calcasieu Parish what business was he engaged in?

(Counsel for defendant objected to this witness stating anything from hearsay, but confining himself to his own knowledge.)

105 I think I can say it was real estate business. It was about the only thing I knew of his doing.

7. Do you know anything of his connection with the Wright-Blodgett Co. in the purchase of land without reference to any special tract, but in a general way?

It was currently, or generally, stated and I have understood that he would purchase timber from the Wright-Blodgett Co.; make purchases for them of lands.

(For the purpose of emphasis counsel for defendant objects to this testimony on the ground that it was hearsay.)

8. Have you ever had any conversation with Mr. Nat Wazey himself with reference to his engagements, or employments, or connections with the Wright-Blodgett Co.?

No, sir.

9. You kept a record of the lands in Calcasieu Parish, did you not, in your office?

I have abstract of title records. I have them now.

10. Do you know of any investigations made by Mr. Nat Wazey of the records of lands in Calcasieu Parish for the purpose of making purchases for the Wright-Blodgett Co.?

No, sir.

11. Now, Mr. Mayo, you have stated that it was generally understood that Mr. Nat Wazey was acting in the interest of the Wright-Blodgett Co. in the acquisition of timber lands. Now state just what circumstances led you to make that statement.

(Objected to by counsel for defendant for emphasis as being mere hearsay.)

Not being able to recall any transaction in which any purchase of land as made by Mr. Wazey was for the specific account of Wright-Blodgett Co., but only from the general statement that purchasers made from time to time either for their own account or Wright-Blodgett Company, I have no way of linking any particular transaction as being for the Wright-Blodgett Co. I so often prove up deeds, titles to  
106 real estate. Mr. Wazey was in and out of my office from time to time, but what transactions might have been for the Wright-Blodgett Co. I cannot say.

12. Do you know where Mr. Nat Wazey lived several years prior to his leaving Lake Charles?

He lived in Lake Charles on our principal street.

13. Was Nat Wazey a married man?

Yes, sir; twice married.

14. Prior to his death, or prior to his leaving Lake Charles, how long had he been a citizen and resident of Lake Charles?

I don't remember the year he moved away from Lake Charles. He came to Lake Charles about 1886, I should say, and left there in the latter part of the 90's, as well as I can recall.

15. After leaving there in the latter part of the '90's did he again return to Lake Charles and make his residence there?

I think not, sir.

16. Do you know where he lived after leaving Lake Charles up to the time of his leaving Calcasieu Parish?

I do not know.

17. Do you know anything of his having a residence in the Parish of Vernon?

Only current report.

18. Did his family leave Lake Charles at the time you state in the latter part of the '90's at the time he himself left there?

I do not know, sir.

#### Cross-Examination.

By Mr. Monroe:

1. You say you know that Nat Wazey left a half-brother living in Miss.?

I don't know but what this half-brother was in Lake Charles at the time Mr. Wazey left there, but he is probably now in Mississippi.

2. What is his name?

A. Frank B. Clingo.

3. Did Nat Wazey have any other brothers or sisters by name of Clingo.

I never heard of them.

107        This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

## TESTIMONY OF BEN M. FOSTER.

Mr. Ben M. Foster, a witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Mills:

1. Where do you live?

Lake Charles.

2. How long have you lived there?

All my life.

3. What business are you in?

Real estate.

4. How long have you been in that business?

Since 1898.

5. By whom were you employed in 1898?

I was in business with my father from 1898 to 1901.

6. Did you change your employment at that time and go in with someone else?

About the fall of 1901 I went in with Wright-Blodgett Company.

7. Do you remember the exact date?

No; it was in the fall. I don't remember the exact date.

8. At what place were you employed?

At Lake Charles.

9. Did they maintain an office there?

108 They did.

10. In what capacity were you employed by them?

Looking after the office generally and keeping books.

11. What was the extent of your authority; the nature of your work?

I was under Mr. Kelly.

12. When you say "looking after the office generally" you mean attending to the business of the office?

Yes, sir; and making my reports to Mr. Kelly.

13. How large was the office force of the Wright-Blodgett Co. at that time?

Just one.

14. You were the only man in the office?

Yes, sir.

15. Yet you say you were under Mr. Kelly?

He did not stay in the office all the time.

16. About how much time was Mr. Kelly there, roughly speaking?

During the first part of the time I was in the office Mr. Kelly was in for several weeks. He generally stayed several weeks at a time. He came about every three or four months—sometimes oftener.

17. During his absence you had full charge of the office work?

Yes, sir.

18. Did you know Nat Wazey?

Quite well.

19. Was he in the employ of the Wright-Blodgett Co. when you went to work for them?

Yes, sir.

20. In what capacity was he employed?

He was a woodman.

21. What do you mean by a woodman?

(For emphasis the objection of irrelevancy was here made by counsel for defense on ground that the employment of this witness, not having taken place until the fall of 1901, nothing that he knows can be relevant to any act or allegation set forth by the pleadings at issue in these cases.)

109 Well, he was employed to inspect timber for the company and make reports on it.

22. What else did he do?

At that time the company's holdings were scattered. They were trying to "block up."

23. What do you mean by "block up"?

They were consolidating their holdings.

24. They would buy lands in between lands they already owned?

Yes, to make their holdings contiguous.

25. How many men were employed as woodmen?

No one else. That is, regularly.

26. Do you know whether there was any record in the office of this company that showed that the lands upon which Wazey would report had been gone over or cruised at any other time.

When the company bought they had the cruisers report on what they bought.

27. Was there any record showing a prior report to that made by Wazey?

In some cases, yes. I remember in some of the townships where the company bought they had a cruiser's report on nearly everything in the whole township. That was for the general office record, showing where was the good timber land.

28. These reports made by Mr. Wazey were made for what purpose?

The purpose of buying. Wazey would make his report as to how much timber there was on the land, which gave the company a good idea how much to pay for the land.

29. What investigation would be made by the company as to titles of these lands that Mr. Wazey would report on?

Well, in cases where there was any doubt at all or any long chain of title we had abstract made. In other cases where there was a patent or receiver's receipt to go by we simply took that first record.

30. It is a fact that the company would buy upon  
110 the report of Mr. Wazey as to the timber?

(Objected to as leading.)

And a fact that where there was a receiver's receipt for the land or the patent they would go by it?

If there was just a receiver's receipt or patent and no other chain of title and if there was timber on the land the company felt justified in buying it.

31. In these cases when Mr. Wazey would report as to the status of the title to the timber on land and as to whether the land was held under a receiver's receipt or patent would any other investigation be made before the company purchased?

No, except that usually—and, I should say, in almost every case—either the receiver's receipt or the patent was sent to the office.

32. But they would send no one to the land to make investigation?

We would send no one from the office if we had a receiver's receipt or patent, any more than we would send anyone to Alexandria or to Lake Charles to investigate as to an abstract.

33. The [then], I understand your testimony to be that the company would buy in cases where there was a patent or receiver's receipt upon the report of Mr. Wazey?

Yes, sir; that is a fact.

34. Without any further investigation?

Yes, sir.

35. Was Mr. Wazey located in Lake Charles, or did he live in the country where he bought timber?

He lived in the woods.

36. Was it part of his business to live in the woods and go around where the land was?

(Objected to as leading.)

He could find out thing at less expense by living in the woods.

37. Where did he spend his time?

111 In the woods.

38. Now, Mr. Foster, from your experience in the office and your examination of the records and familiarity with them and from your conversations with Mr. Kelly and with Mr. Wazey, do you know how long prior to the time you went into the office Mr. Wazey had been employed by the company?

(For emphasis the objection is here made by counsel for defendant that the question calls for secondary and hearsay evidence, which is inadmissible and is hereby objected to.)

I don't know just how long. I know it was some years before I went in. Possibly, maybe three, years.

39. Do you know in what capacity he had been employed prior to the time you went into office?

(Same objection here made by counsel for defendant.)

I don't know, but I suppose it was in the same way.

40. For what reason do you suppose it was in the same way?

For the reason that no change was made in the office when I went in, that I know of.

41. Did the records of the office show in any way what his employment had been?

Practically the same.

42. Just the same as afterwards?

Yes, sir. He got his salary just the same as afterwards.

43. In what way would these lands bought through Wazey be paid for?

Currency, usually.

44. Who would do the paying?

Most of the time Mr. Wazey; once in a while Mr. Kelly, and occasionally I went up. Sometimes other people would pay when they bought through some other agent.

#### Direct Examination Continued.

By Mr. Elstner:

45. You know the domicile of the Wright-Blodgett Company?

Saginaw, Wesside, Michigan.

46. Firm or corporation?

112 A partnership association, so the deeds all recite.

47. Do you know the individual members of that partnership association I know some of them.

48. Give their names.

I can only state positively as to the officers—Mr. Davis, Mr. Blodgett and Mr. Stork.

(For emphasis the objection is here made by counsel for defendant that the testimony is irrelevant.)

49. Do you know that any of those whose names are mentioned by you came to Lake Charles and in person supervised or conducted the affairs of the partnership?

Mr. Stork came down about once [once] a year usually. He always stayed at the office.

50. Do you know that Mr. Stork at any time went out and made personal investigations of the lands to be acquired by Wright-Blodgett Co.?

I don't believe so. Not to my knowledge.

51. Who exercised general supervisory control over the affairs of the Wright-Blodgett Co. in Louisiana?

Mr. Michael H. Kelly.

52. Do you know about what time Wright-Blodgett Co. began their operations in Louisiana?



In 1898, I believe.

53. What time did Mr. Kelly assume supervision of the affairs in Louisiana?

I do not know. I suppose when the company came into Louisiana. Mr. Kelly had charge when I went in in 1901.

54. You don't know how long prior to 1901 he acted in that capacity?

I don't know, but I suppose from the beginning.

55. How long prior to 1901 had you known Mr. Kelly?

Two years or more.

56. Where?

In Lake Charles.

113 57. You saw Mr. Kelly frequently prior to 1901?

Yes, sir; I saw him often. Our offices were adjoining. That is, there was only a door between his office and that of my father.

58. Were you ever in his office prior to 1901, either socially or otherwise.

Yes, sir.

59. Did you know from your visits to his office and from the observations you there made in what business he was engaged prior to 1901?

Yes, sir. He managed the business of Wright-Blodgett Company.

60. Did you know him as early as 1898?

That is so far back I hardly remember, but I believe that is about the time I first saw him.

61. From that day on from your observations you know he was engaged in connection with the Wright-Blodgett Co.?

Yes, sir.

62. Do you know whether or not Mr. Kelly visited the lands that were subsequently purchased by the Wright-Blodgett Co. prior to their purchase?

I don't know whether he saw all of them, but I suppose Mr. Kelly must have looked over the main purchase before he purchased. (By main purchase meaning original purchase about 1898 of the Fairbanks and Head and other lands.)

63. Do you know of Mr. Kelly's going with Mr. Nat Wazey at any time to any of the lands purchased at the suggestion of Mr. Wazey in order to look over them?

Yes; frequently he went with Mr. Wazey into the woods to verify his estimates and things of that kind.

64. Do you know where Mr. Nat Wazey had a homestead where he lived in the woods?

Yes, sir.

65. Did you ever visit him there?

Yes, sir.

114 66. Did Mr. Kelly ever go with you there?

A. Yes. I made one or two trips with Mr. Kelly; may be several.

67. Ever stop at Mr. Wazey's all night?

Several times.

68. Mr. Kelly also?

Yes, sir.

69. Were you ever present at the time that Mr. Wazey paid for any of these lands?

Yes; several times.

70. Now, these deeds, without taking them up separately, specify that there was so much paid in cash as a consideration of the purchaser from the man who held the final receipt—that is, the entryman. At the sales at which you were present did you see the money paid?

(At this point counsel for defendant asks counsel for complainant if, in the question above, he was referring to the lands in controversy in the bills now before the court, and in reply counsel for complainant substitutes the following question for Q. No. 70.)

71. Do you know anything, of your own knowledge, in regard to the sales of the lands by the homesteaders to the Wright-Blodgett Co. by being personally present and witnessing the sales prior to what date?

Late in the fall of 1901. I think in the month of December; might have been November.

72. At no sale prior to 1901 were you present?

No, sir.

Direct Examination Continued.

By Mr. Mills:

73. Do you remember the numbers of the lands on which Wazey lived?

Section 28, Township 1 South, Range 5.

74. You are positive as to that?

Yes, sir.

75. When was it that you visited him?

Oh, I don't know how many times.

76. Was Wazey living there with his family?

Yes, sir.

115 77. He had his household goods?

Yes, sir. He made his home there.

78. Do you know how long he lived there? When was the first time you saw him there?

Soon after I went in with the company, within a few months. He had just moved there from Slabtown.

79. How long do you remember that he lived out in the woods?

He was still living there when I left the employ of the company. The place was called Sigler.

80. When did you leave the employ of the company?

The 1st of March, 1904.

81. Did he live at any other place during that time?

No, sir.

#### Cross-Examination.

By Mr. Monroe:

1. These visits which you say you made to Mr. Wazey in company with Mr. Kelly were all made after your employment with the Wright-Blodgett Company in 1901, and the earliest visit you remember of making was some month or two after your employment?

Yes, sir.

2. If I understand you correctly, you stated the company had caused to be made a general cruisers' estimate of the timber in that section of the country?

No, I did not state that they caused the cruise to be made, but I believe they had such a cruise from Mr. J. D. Lacy & Co.

3. Who are J. D. Lacy & Co.?

Real estate men with an office in New Orleans.

4. Do they or do they not make a business of making these timber cruises or estimates?

It is their principal business, or was at that time.

5. How do they stand in the business and how are their estimates considered by timber people?

Of the best.

116 6. You are connected with the timber business to some extent? And have been for some time?

Yes, sir.

7. Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacy & Co. without making any special investigation themselves?

That is the usual case; the usual method of doing business.

8. You say Wright-Blodgett Co. had the estimates of J. D. Lacy & Co. for that part of the country?

A. Yes, sir. I think it was made before their original purchase, and I think they got their figures from Lacy for the original purchase.

9. What acreage was thier original purchase.

I have forgotten now.

10. Approximately?

Something more than 100,000 acres.

11. During your encumbrance of office under Wright-Blodgett Co. did any law firm examine and pass on titles for them?

Yes, sir; Pugo & Moss of Lake Charles.

12. What was the customs of Wright-Blodgett Co. relative to examination of titles by Pugo & Moss?

They turned all abstracts over to them for their opinion before they were sent to the home office.

13. Did they examine the title before the sale was actually concluded?

Well, in some cases they did and in some cases they did not.

14. Was it the custom of the office to submit the title to Pugo & Moss for examination, have them approve it and then pass the deed and record it and then submit the entire abstract with deed to them and have them write their approval on it?

That was the case during the latter part of the time I was in office, but when there was a patent or a receiver's receipt sometimes we bought and paid for the land before the title was approved.

117 15. I take it that in all cases where Pugo & Moss gave a written opinion on the back of an abstract, that the title had been examined before purchasing and subsequently had been submitted to them for opinion and written approval?

That is a fact.

16. Was J. M. Boyd in the employ of Wright-Blodgett Co. during the years 1901-02, or prior to those years?

He was never in the employ of the company while I was with them, and I don't believe before I was with them.

17. The Wright-Blodgett Co. bought considerable land out in that neighborhood, did it not?

Yes; more than 50,000 acres, I suppose.

18. Was it not the custom of Wright-Blodgett Co. to insist upon the delivery to them of a final receipt or patent before paying for land?

Yes, it was always the case.

19. Their instructions to the office were to buy nothing unless they had either a receiver's receipt or a patent?

Well, unless in the case of a complicated title; one that had passed through many hands. Then we would not insist upon receipt or patent. But if the only instrument was a patent or receiver's receipt, we always got the one or the other, unless it might be where the company bought only a part of a homestead and when, although we got the patent, we returned the patent to the entryman. But in case of receiver's receipts we got it. That was always before the sale was closed.

20. Mr. Foster, you spoke of certain handling of cash in purchases by Mr. Wazey, and in asking some of the questions attorney for complainant used the expression "those lands." It is important to find out what lands were being referred to. You would not, for instance, in answering those questions have been referring to any deed which was made prior to the time you went into the employment of the Wright-Blodgett Co. in 1901, would you?

No, sir.

118 21. The testimony of that subject was relative to some transactions subsequent to that date?

On lands generally during the time I was with the company. Nothing prior thereto.

22. When you went into the employ of the Wright-Blodgett Co. was any one else purchasing lands and timber for them besides Mr. Wazey?

Yes; Mr. Wingate at Leesville bought some, and Lewis Mel-dor of Glenmora bought some.

23. You stated on your direct examination that you supposed that Mr. Wazey had been buying before you went into the employ of the Wright-Blodgett Co. in 1901. Did that sup-

position apply equally to these other gentlemen who were purchasing?

Yes, sir.

### Redirect Examination.

By Mr. Elstner:

1. Did you have in the office of the Wright-Blodgett Co. in Lake Charles a general map showing the pine lands in the several parishes around?

We did.

2. Did that map show the lands owned by individuals and also the lands then belonging to the public domain of the United States?

No, the maps showed the ownerships by private corporations of the principal big holdings throughout the pine belt.

3. Then the Wright-Blodgett Co., or its officers in Lake Charles, had no knowledge of the pine lands in Vernon, Rapides and Calcasieu parishes except insofar as they were owned by corporations or individuals?

The white places on the map would show that other corporations did not own that particular land.

4. Then you would take it that all the lands not appearing on the map as owned by corporations or individuals were public lands?

119. No, because we did not mark up the individual lands. If there was an individual ownership of, say, a quarter section, we did not note it on the map.

5. Did the Wright-Blodgett Co. ever keep maps or records of any kind in its office for a knowledge of the lands belonging to the public domain in these parishes?

Yes, from time to time we got such records. Not generally, but in special cases we have seen maps showing the ownership of all of the holdings and that which was not colored was public domain land. In other words, in the company's office, in "blocking up" their lands, we tried to know who owned all of the intermingling lands.

6. As a matter of fact, the value of pine lands depends to some degree on the compact forms in which that land is located, does it not?

Yes, sir; and a big degree, too.

7. Was it not the purpose of the Wright-Blodgett Co.,

knowing this fact, to try and secure as large a tract of land in compact form as practicable?

Yes, sir.

8. Did they not make inquiries, both from maps and from personal investigations, with a view of ascertaining the location and ownership of lands that would facilitate them in carrying out this object?

They did.

9. In doing this would they not necessarily ascertain lands in juxtaposition to their own that were within the public domain?

They did.

10. Did Mr. Kelly and Mr. Wazey, or other representatives of the Wright-Blodgett Co. frequently visit their holdings?

Mr. Wazey was on the ground all the time; Mr. Kelly made periodical trips, and I have been on it several times.

11. With reference to the trips made, what would you call periodical trips?

Every time he would come down, which was every three or four months?

12. When Mr. Kelly was away you were in charge of the office?

Yes, sir.

120 13. During his absence did you exercise the same kind of supervision over the affairs of the company that Mr. Kelly did in person when present?

No; I referred everything to Mr. Kelly.

14. I do not mean did you exercise the same degree of control over the affairs of the company, but did you frequently visit the holdings of the company in order to ascertain the existing condition during his absence.

I did.

15. You had on the map of the company, and from that map could determine the locality visited by you when going over the holdings of the company?

(For emphasis the objection is here made that this testimony is totally irrelevant for the reason that witness has repeatedly stated he was not employed by the company until 1901, and subsequent thereto, and that all the purchases in these cases by Wright-Blodgett Company were prior to that date.)

16. Whenever you visited these holdings did you have an opportunity of becoming acquainted with the people living in the community?

To a certain extent, yes.

17. Did you have an opportunity of seeing in what kind of business they were engaged?

Most of them were farmers.

18. Did you have any opportunity of observing or judging of their apparent financial condition?

They were just like the ordinary piney-wood folks.

19. Do you know in what amounts, if any, money was sent from Lake Charles to Nat Wazey at Glenmora?

Money was sent there only once or twice, possibly three times, to my knowledge.

20. Do you know in what amounts?

I do not recall; something like \$1,000.00, possibly more.

21. Do you know where the Wright-Blodgett Co. kept, either as a firm or through their agents, their bank account in the city of Lake Charles?

They had no bank account in Lake Charles.

22. Did Mr. Kelly have a bank account in Lake Charles?

He did.

121 23. At what bank?

Calcasieu National Bank.

24. Do you know whether Mr. Kelly kept that money on deposit there or received the money in that bank as his own individual funds or as an agent for the Wright-Blodgett Co.?

I suppose that it was the Wright-Blodgett Co.'s money.

(For emphasis objection is here made that this is merely hearsay.)

25. Why do you suppose it was Wright-Blodgett's money?

Because it was used for the company.

26. Can you state whether or not on three or more occasions that out of that fund as much as \$2,000.00 at a time had been sent Nat Wazey for lands acquired?

Yes, but I don't know how many times; several times. And I don't remember the exact amounts. There might have been more money than that sent to him at times. Usually he got enough money to pay for the lands he had written in about. If several sales had been made he might have gotten as much



as \$5,000.00 at one time, but if only one sale it would have been correspondingly less.

27. Do you know of any money being sent to Wazey at any time that was used by him for the payment of the purchase price of lands that were held by the entrymen under final receiver's receipt and was paid to the entrymen by Wazey and the final receipt turned over to Wazey and then subsequently delivered to the representatives of the Wright-Blodgett Co. at Lake Charles?

(By way of emphasis the objection is here made that any answer to this question which does not pertain to land described in the bills in one of the cases now before the court will be irrelevant, and that any answer which may pertain to land described in one of the bills will be irrelevant as to the other eight, which objection is here made for emphasis.)

Yes, sir.

28. Do you know how often that occurred?

(Same objection made here as to No. 27.)

Every time they bought on final receipt.

29. You have been in the land business and Mr. Kelly has been in the land business for a long time. Are you familiar with the homestead laws of the United States?

122 (Objected to as irrelevant.)

I am.

30. About how far from Lake Charles are the lands held by the Wright-Blodgett Co.?

You mean "were held," do you not? They don't own any now.

31. Yes, sir. About how far from Lake Charles were the lands known as the lands of the Wright-Blodgett Company?

About sixty miles.

32. About how far from a railroad?

About twelve miles, the nearest of them. They had some scattered lands within four or five miles of the Watkins road.

Re-Examination Continued.

By Mr. Mills:

33. Who held the same position occupied by you prior to the time you went to work for the Wright-Blodgett people?

(Objected to for emphasis as hearsay.)

Thomas E. Dickens.

34. How do you know he was employed by them?

I have seen him there. Our offices were next to each other.

35. For how long a period was he employed by them prior to the time you went to work for them?

A couple of years.

36. Was he the only man in charge of the office or were there other men in the office with him?

He was the only one.

37. Where is he now?

I don't know.

38. Mr. Monroe has called your attention to the fact that a cruise or report had been made on lands in this territory about 1898. In cases where lands were bought upon the recommendation and report of Mr. Wazey, what would govern the action of the company, the report of Mr. Wazey or the record of the cruise?

As a general thing there would not be much difference between the reports, but if there should be Mr. Wazey was sent back to see if an error had been made.

123 39. If he stated that no error had been made in the report what action would be taken?

His report would be accepted.

#### Recross-Examination.

By Mr. Monroe:

1. About how often (during the course of your employment) in a year would you get on any individual forty belonging to the Wright-Blodgett Co.

I should say on an average of every three or four months.

2. That was on the holdings belonging to them?

Yes, sir; to the Wright-Blodgett Company.

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#### Direct Examination.

By Mr. Elstner:

1. Mr. Foster, did you at any time deliver money in person to Mr. Nat Wazey for the purpose of purchasing land for Wright-Blodgett Co.?

- A. I did.
2. About how many times?
- A. Several times. I don't remember how many times.
3. State about what amounts?
- A. Usually about \$1,000.00 at a time. I have delivered as high as \$5,000.00 at a time.
4. Within what period?
- A. During the time I was with the company in the fall of 1901 to the fall of 1904.
5. Where would you deliver this money to Wazey?
- A. Sometimes in Lake Charles. Sometimes in Sigler. Maybe once or twice in Glenmora.
6. You delivered it as a representative of Wright-Blodgett Company?
- A. Yes, sir.

#### Cross-Examination.

By Mr. Monroe:

1. As I understand, Nat Wazey would go out through the country and get price on various lands, would bring them back and submit them to the Lake Charles office of Wright-Blodgett Co., the Wright-Blodgett Co. would then have the titles passed upon, and if the prices were all right and the titles correct, would instruct Mr. Wazey to purchase and would give him money to complete the purchase with. Is that correct?

A. That is correct.

2. And in all those cases was the title examined before the act of sale was actually passed?

A. In most cases. There might have been a few cases.\* If you mean by attorneys, I will say "in most cases;" if you mean by the office, I will say "in all cases."

3. In one or two cases when Wazey broke through that rule he was held personally responsible for the purchase,  
125 he having purchased without submitting back to the office first?

A. Yes, sir; that is a fact.

4. When you were last on the stand you stated that at some time during your holding of office under the Wright-Blodgett Co. that it became customary when Wazey submitted simply a final receipt to authorize the purchase without having the abstract made and submitted to attorneys. Was that the custom when you first went into office?

A. No; when I first went into office it was the custom, and I believe, instructions, that all titles had to be examined by Pugo & Moss before any deeds were passed.

5. And after you went into office they having always, approved final, receipts, you fell into the habit of not submitting final receipts to them any more. Is that correct?

A. Yes; final receipts and patents. If titles were based on final receipt or patent, having been approved before then, we did not go into the trouble and expense of having abstract made to show one item. We put the deed on record and then had abstract made showing title in Wright-Blodgett Co. and then turned it over to the attorneys for approval. That was more as a matter of form.

6. At the time you first went into office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pugo & Moss for approval?

A. Yes, sir; all titles.

6. Mr. Moss testified this morning that it was the opinion among local members of the bar at that time that purchasers were justified in buying on a patent or final receipt without further investigation. When you first went into office was any advice of that character given to you by the firm?

A. I don't remember any special advice, but that was my understanding—that either a final receipt or a patent was as good as a title could be.

126 (Counsel for complainant in these cases makes no special objection here to the irrelevancy by reason of the witness being called upon to state the efficacy of the correctness or incorrectness of his conclusions at the time as to questions of law, but rests the right of objection to all testimony taken in this case on the special right specified and agreed to by both counsel for complainant and counsel for the defendant in the beginning of the taking of this testimony, thinking it unnecessary to specifically reiterate the safeguards set forth in this first understanding.)

7. Mr. Foster, you have had some experience as a timber estimator?

A. Yes, sir.

8. When a timber estimator goes on land and estimates timber, does he pay any particular notice to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact of how the house is located on the land. Also make a note of the fact of how much has been cleared in order to justify any statement that is made as to the timber.

9. Do you make any statement as to the condition of the house?

A. None whatever—I don't.

10. Do you pay any particular attention to the condition of the house?

A. Not to the house; simply as to how much land is cleared.

11. You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

12. That is the custom observed among all timber estimators?

A. Yes.

13. You stated a while ago that you had given sums of money of from \$2000 to \$5000 to Wazey in cash. Those sums of money were given him to pay for specific purchases which had been submitted to the office, titles approved and he authorized to buy?

A. In all cases.

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Re-Examination.

By Mr. Elsner:

(Counsel for asking if in two or three instances Mr. Nat Wazey made purchases for which the Wright-Blodgett Co. afterwards held him responsible for the reason that they had not been approved before hand by Wright-Blodgett Co., witness answered that Wazey was charged with these sales.)

1. Was any sum of money withheld from Wazey in order to make him responsible for any errors that might have been made in purchase?

A. Yes, in two or three cases Wazey was charged with land that he had bought without submitting titles and afterwards we found some discrepancy in the title. That amount remained charged against him (Wazey) until he had titles straightened.

2. Did either of these instances to which you refer apply to purchases made by reason of a final receipt?

A. I don't recollect. I remember that we held, I think, two sales on Wazey's account. But whether on receiver's receipt or something else, I don't recall. I think one of them was on account of a defective tax title. But I don't exactly remember.

3. You have stated that you never made any inquiry further than to find the existence either of the patent or the receiver's receipt in cases of that character?

A. No; we always accepted them, except towards the last few months I was in office. That was after the investigation up there by Mr. Ervin, special agent.

4. Then it is not probable that any of the instances to which you refer wherein Mr. Wazey was held responsible for his purchase occurred in cases of either patents or final receipts?

A. I don't recollect the special name that Wazey was charged with.

5. But it was in case of either patent or final receipt?

A. It would have been in either a case of patent or receipt because all titles went back to that.

6. Counsel for defendant asked you if you would, 128 when going upon the lands covered by a final receipt, either as a timber estimator or for the purpose of viewing the lands, you paid any attention to the character and extent of improvements, and you answered, no, only to the extent and for the purpose of observing the value of the timber standing on the land at the time.

A. That was the only report we would make. We would notice them generally, but would pay no attention to them. We would consider improvements on timber land as of no value. It was simply timber we were looking for.

7. Are you familiar with the forms used in acquiring title to the public lands of the United States under the homestead laws in making both the five-year proof and the commutation proof?

A. I am; yes, sir.

8. In going upon these lands would you make any investigation for the purpose of ascertaining whether the entrymen had complied with the laws so as to entitle them to a final receipt?

A. I never did.

MR. H. H. ROCK, witness in behalf of complainant, being duly sworn, testified as follows:

Direct Examination.

By Mr. Elstner:

1. Where do you reside?

Lake Charles, La.

2. What business are you engaged in?

Banking business.

3. With what bank?

Calcasieu National Bank.

4. Have you with you a statement from your shipping book?

I have the shipping book.

5. I wish you would turn to that book and find any shipments that may have been made to Mr. Nat Wazey from your bank.

The only one I find is on October 7, 1902, a shipment of \$2,000.00 to Glenmora, La., sent by express.

6. At whose instance was that shipment made?

I could not say as to that. I don't remember that far back.

7. Don't your book show?

That book does not show.

8. Have you a book that does show?

Well, unless there was some check given for it it would not. If it was charged to someone's account it would show.

9. Do you know at whose instance that shipment was made?

I could not say positively who ordered the shipment made.

10. Do you know out of what funds it was shipped?

No, I do not know for sure.

11. You have no knowledge out of what funds it was shipped?

No, sir.

12. Was it out of a fund belonging to Nat Wazey personally in the bank?

I don't think so; I could not say positively without looking it up.

130 13. Is that the only one in that book? Any shipments prior to that time?

I haven't looked clear through the book.

14. I will ask that you take the book and make close examination and find all the shipments that have been made, as shown by that book, from 1898 up to 1903?

The book does not commence until 1902.

15. I will ask why you did not comply with your subpoena duces tecum?

Because that was the first shipping book that we ever used. Our business was so small before that time that we just used our express books as receipt. We did not have a regular shipping book.

16. Did you have any books or records in your bank that corresponds with the book that you produced herein in obedience to the order of the court?

No, sir.

17. Any records which showed shipments made by the bank prior to the use of this book?

Yes, sir.

18. What do you call them.

Express books.

19. Are they now in possession of your bank?

I don't know just where they are if they are.

20. You don't know whether they are in the possession of your bank or not?

No, sir.

21. Were you in the bank then?

Not prior to 1900.

22. And 1902 is the time you first commenced keeping this book?

Yes, sir.

### Direct Examination.

By Mr. Monroe:

1. Mr. Moss, you are an attorney by profession and are a member of the law firm of Pugo & Moss of Lake Charles, La.?

2. Yes, sir.

2. That firm has been practicing law in Lake Charles since some time prior to the year 1898?

Yes, sir; since 1896.



3. Was your firm employed by the Wright-Blodgett Co. in or about the years 1898 and 1899?

Yes, sir. My recollection is that the employment began about 1899.

4. What was the nature of that employment?

Our firm was employed to pass particularly upon abstract of titles upon lands the company was acquiring in the parishes of Calcasieu, Vernon and Rapides, and also to advise representatives of the company at Lake Charles in reference to the purchase of lands.

5. What was the custom adopted by your good selves and the Wright-Blodgett Company relative to these examinations of title?

Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office after the deeds were acquired from the different owners and these deeds were carried on the abstracts so that our opinions would show our opinion of the titles in the Wright-Blodgett Company. In some cases that I recall there would be two written opinions.

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## Cross-Examination.

By Mr. Mills:

1. When your connection with the Wright-Blodgett Co. began who was in charge of their office at Lake Charles?

Mr. Michael Kelly.

2. Who made arrangements with you for your employment?

My recollection is that Mr. Kelly did. That is my recollection of the matter. He might have had the arrangements approved by the home office.

3. Do you remember when Mr. Ben M. Foster went to work for the company?

Mr. Foster went to work for the company at Lake Charles, but I cannot give you exact date. To the best of my recollection it was near 1902. I cannot state the date definitely.

4. Prior to his employment who was employed in the office of the Wright-Blodgett Company?

Mr. Kelly was in Lake Charles himself at the beginning. After Mr. Kelly was there for some time and returned North, Mr. Thomas Dickens was in the office for some months. I cannot give you the exact length of time. After Mr. Dickens my recollection is that Mr. David Livingstone, a young man of Lake Charles, was there several months.

5. Where is Mr. Livingstone?

At Lake Charles. And then I think Mr. Foster followed Mr. Livingstone. With reference to the time these parties were in the office I am testifying from recollection. Mr. Kelly and Mr. Stork would know better than I.

6. Who would bring these abstracts and deeds to your office for examination?

When Mr. Kelly was there he would bring them. In his absence Mr. Dickens would bring them, or Mr. Foster, or Mr. Livingstone, as the case might be. If Mr. Kelly was in the office he usually brought them in.

133 7. How much time was Mr. Kelly there?

When Mr. Kelly was first in Lake Charles, about 1899 or 1900, he was there for twelve months or more (I cannot give the length of time definitely) for one or two years.

8. Constantly?

He would return to his home in the summer time.

9. Did you have any dealings with any other employee of the company besides those you have mentioned?

No direct dealings that I can recall. The parties I have mentioned were the parties in the local office at Lake Charles. The local office was in the same building in Lake Charles as our law office—the First National Bank Building.

10. Do you know whether or not from 1898 to 1902 a man by the name of Nat Wazey was employed by the company?

Nat Wazey did some work for the company out in the field.

11. Do you know whether he was regularly employed or was employed spasmodically?

I could not answer that question because I really don't know. Mr. Wazey was at that time living in the northern part of Calcasieu or about the edge of Vernon Parish, and I did not see him in Lake Charles more than twice a year. He was out in the country.

12. In looking over these papers, abstracts, deeds, etc., did you ever have any occasion to look over or notice any reports from Nat Wazey regarding any transaction?

No, sir. No report from Wazey would ever come to our office; at least, I recall none.

13. Mr. Moss, how is it that you know then that Nat Wazey was employed to do field work as far back as 1898 by the Wright-Blodgett Co.?

I don't know, Mr. Mills, that it extended that far back.

14. How far back do you know it extended?

I cannot tell you with any certainty.

15. How long prior to the employment of Ben M. Foster, do you know Nat Wazey was connected with the company?

134 I cannot answer that question either. It has been about five or six years ago, and my recollection is that Mr. Wazey was doing some work, and Mr. Foster was in the local office, but as to how far beyond that time or prior, I could not fix that.

16. Do you know that he was employed by the company some time prior to the time Mr. Foster took up his work?

No, sir; not with certainty enough to answer. Mr. Foster had been at work for the Orange Land Company down there and I think that Mr. Kelly employed him and he changed right over to the other office, but I cannot fix the exact time.

17. Do you know whether Waezy was employed by the Wright-Blodgett Co. prior to 1902?

I cannot swear that he was.

18. Do you know?

It is likely that it was prior to that time, but I cannot say positively without referring to documents or something that might show such employment. I cannot from recollection. It is six years back and I can remember about the dates.

19. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett people.

I think all but the first transaction. My recollection is that when the company first organized that it embraced a very large tract of land from parties in Chicago—the Fairbanks people—and according to the best of my recollection that purchase was made before Pugo & Moss ever saw the abstracts of title.

20. In cases where the Wright-Blodgett Co. would purchase direct from entrymen or government land would you be called upon to pass upon such title where there were no transfers—nor intervening transactions?

That is my recollection; that the abstract would be brought

in; either before or after issuance of patent the abstract would always be brought in showing the issuance of the patent or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, 135 written opinion would be given, and then, after the deed was acquired in the name of Wright-Blodgett Co., either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards Mr. Kelly explained to us that he wanted opinion from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that, in event of sale of land subsequently, these written opinions could be used.

21. Did you make up a new opinion in each instance when receiver's receipt and patent were submitted to you?

Yes, sir; that is my recollection.

22. You are not positive about it?

It might have been that in a very few cases the deed was taken before the abstract was brought in, but my recollection is that the rule was otherwise.

23. What did the abstract show in a case where there had been no transfer and the Wright-Blodgett Company was purchasing direct from entrymen after the issuance of receiver's receipt?

In such case, if it was before the issuance of patent and after the issuance of final receipt, it would simply show issuance and record of the final receipt. In other words, we did not have the affidavit of the entryman before transfer.

24. In these cases of purchases after the final receipt but before patent did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the homestead law had been complied with?

No; we would have the naked abstract showing just the issuance and record of final receipt.

25. During the years of your employment by the Wright-Blodgett Co. you talked frequently about land matters and titles with Mr. Kelly, did you not?

Yes, sir; but only with reference to the validity of the titles as was shown by the abstracts and in a general way about them. The idea I want to convey is that Mr. Kelly did not talk his private business with me.

136 26. In his talks with you in regard to the validity

of titles, did he display a thorough knowledge of the homestead laws of the United States.

I cannot testify as to what knowledge Mr. Kelly had at that time of the homestead laws of the U. S.; that is, as to what is required in the matter of proof and residence, etc., by the homestead entrymen I cannot say what knowledge he had of these matters.

27. Now, Mr. Moss, you are a lawyer and an intelligent man, and you know you have talked many times with Mr. Kelly in regard to these land matters. Now, I don't presume that you can look in Mr. Kelly's mind and state the exact extent or condition of his knowledge, but you can state whether or not from your conversations with him he showed a general thorough knowledge and understanding of the government land laws in regard to homesteads. I ask you to state that.

I cannot say that Mr. Kelly when he came to Calcasieu parish about 1899 had a general knowledge of the homestead laws, because I do not recall that we ever discussed them with Mr. Kelly at that time, but we did in later years when the government inspectors were sent into Calcasieu, Vernon, and others parishes, and it was reported that there had been some fraudulent entries, caution Mr. Kelly particularly about the acquisition of lands on the issuance of final receipts unless the entrymen were complying with the laws and insisting upon his finding out whether such entrymen were complying with the laws as to cultivation, residence, etc. In other words, Mr. Kelly was a stranger to our firm (Pujo & Moss) when he first came to Louisiana in 1899, and we did not know what experience he had had in land matters prior to his coming to Louisiana.

28. Mr. Moss, I don't consider that you have answered the question. I again ask you, from your experience and dealings with Mr. Kelly between the time when you first met him and he was a stranger to you in 1899, and the time when the inspectors were going about the country in 1902, what impression he created upon you as to his knowledge of land matters and government land laws.

137 I will have to say in answer to this, Mr. Kelly did not display any great knowledge of land matters and land laws because he would not make a purchase without coming to the office with his abstract and asking our opinion as to the title, and at that time Mr. Kelly was known to us as

an expert timber estimator rather than a man who knew the land laws.

29. Did you ever discuss with him these questions of title?

I don't recall that we ever had any discussions with Mr. Kelly about the acquisition of titles further than to report directly on the abstract until it was rumored that the Government was making investigations in that territory.

30. Did you advise the Wright-Blodgett Co. that before transferring any land that they had purchased upon a simple receiver's receipt that it would be advisable for them to make an investigation before they sold the land to anyone else?

No, sir; I don't recall that we ever gave any such advice to him or ever thought it was necessary because up to the time of these rumored investigations we did not know of a single case that had come up in our courts in southwest Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making, themselves, any special investigation of it.

31. After you had learned of these investigations and had become convinced that a purchase upon a simple receiver's receipt was not a safe purchase, did you advise the Wright-Blodgett Co., or did they advise with you, as to whether or not it would be proper for them to have investigated lands that they had already purchased upon a simple receiver's receipt as to whether or not the homestead laws had been complied with?

No, sir; we did not go into the question of any past transactions, but talked with them about future transactions, to be careful and see that the law was complied with.

32. Now, as to future transactions—did you advise them or did they advise with you, as to whether or not it would be safe or proper for them to sell to third persons lands acquired by them upon a simple receiver's receipt without making investigations about the compliance with the law?

138 No, I don't recall that that question ever came up or was discussed in the office.

33. Can you remember the exact date, or the approximate date, when the Wright-Blodgett Company became aware of these investigations?

No, sir; I cannot fix the date definitely.

24. About when?

I can only approximate the time and I cannot get it definitely within a period of over three years, about 1902-1903-1904. I

don't remember exactly when the investigations were begun, and we did not find out about them until some time after that, because the government people worked quietly and secretly. I should say along about 1902, '03 or '04.

35. When you called the attention of Mr. Kelly, or any other representative of the Wright-Blodgett Company to the importance of having investigations made when they were about to purchase lands under a receiver's receipt, and before the issuance of patent; was anything at all said about purchases made under those circumstances prior to the hearing of these rumors of inspection?

No, sir; I don't think that past transactions were ever referred to.

36. Now, Mr. Moss, you know that many such purchases had been made prior to that time?

Yes, sir; I know quite a number.

37. You are absolutely sure that when you told these people that there was a question as to the validity of title thus acquired unless the law had been complied with, that they asked you absolutely nothing at all about purchases that had already been made under those circumstances?

That is my recollection.

38. Mr. Moss, you do not know as a fact that in cases of purchases upon a simple patent or simple receiver's receipt that you were always consulted under those circumstances?

I cannot swear that I was consulted in every case.

139 39. You have never examined the records of all lands acquired under any circumstances by the Wright-Blodgett Co., and then checked that up against opinions rendered by your office to ascertain whether or not your office had rendered opinions in cases of all lands.

No, sir.

40. Then, for all you may know or recollect, they may have made a number of purchases upon receiver's receipt or patent where there had been no intervening transfers without consulting you?

Such a thing is possible, but our understanding is that every transaction passed through our office except the original purchase made, as I recall, from the Fairbanks, which was a very large purchase made by Wright-Blodgett Company, and I think that abstract reached the office at some subsequent date and was examined.

## Re-Examination.

By Mr. Monroe :

1. Mr. Moss, on your cross-examination informally in the course of explanation given to the assistant district attorney, you explained the attitude of the Calcasieu bar prior to the coming of the government inspectors into Calcasieu parish on the subject of titles based on final receipts from the government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the government inspectors?

Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our courts that I can recall where any charges of fraud was ever made relating to any entries, and the lawyers, while they might have been mistaken, thought a final receipt to be equivalent to a patent.

2. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

140       The first time that the matter was called to our attention was when the investigation was started by the government to which I have referred, and I cannot give the exact year.

3. In the course of the cross-examination, counsel for complainant seemed to think it strange that after your attention was called to this possibility of trouble no reference was made in your conversations with Mr. Kelly to titles acquired prior to that time. How do you account for the fact that no reference was made to prior acquired titles?

The only way to account for that is that at the time of these investigations the discussion came up as to future care in the acquisition of title where final receipt only had issued; that for the past transactions the patents had at that time been obtained if not in every case, in almost every case. The patent had been obtained and had issued to the original entryman who had issued final receipt, and not having had any



litigation at the instance of the government or otherwise attacking such transactions it was naturally thought that after the issuance of the patent it was all a closed book. It was the lawyer's opinion in such cases.

#### Recross Examination.

By Mr. Mills:

1. The answer that you have just made that you account for your failure to advise them as past transactions, because you think patents had issued—is that answer based on knowledge or simply opinion or thought on your part?

That was the only way I could account for it; as to the past transactions we were not asked about them.

2. Did you make any investigation as to whether patent had issued in past transactions?

No; we did not make any investigation of our own.

3. Then, if you are asked as to whether or not in cases of purchase upon simple receiver's receipt prior to this investigation, patents had issued at the time that you heard of these investigations, you would have to answer, "I don't know?" Is that correct?

Yes, sir; I would so have to answer. Although,  
141 when patents came in they would be reported to us.

I would say, "I don't know," as to each case. I could not say, positively.

4. Then, I understand from your answers, Mr. Moss, that it was the custom of your firm, which was employed by the Wright-Blodgett Company to pass upon the matters of titles, to base your opinion upon the attitude of the bar and to whether or not any suits had been brought or any investigation made by the government rather than by the investigation of the law. Is that correct?

No; not exactly. We thought that when an entryman held his final receipt that he was entitled to the patent. That was our opinion at that time.

5. That was a mere independent matter of opinion, clean from the general attitude of the bar, or was it based on a thorough investigation of the law by you?

It was based upon reading of the law, but not a close study into the homestead law and the requirements in different jurisdictions in such matters. We had approved in the past a great many titles on issuance of final receipt and all had stood, and so we based our knowledge on our past experience and our general knowledge of the law, and we thought we could approve the law on issuance of final receipt.

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142            Testimony of MR. C. D. MOSS, witness in behalf of defendant, in the E. Z. Boyd, Case No. 364.

Direct Examination.

By Mr. Monroe:

1. Mr. Moss, I hand you herewith an abstract marked W-B Co. 1, to which is annexed an opinion signed Pugo & Moss, and I will ask you if that abstract covers the south half of the southwest quarter of Township 2 North, Range 5 West, Section 14?

(The question is objected to, on the ground that the evidence is inadmissible because it does not show that the witness is refreshing his mind from his own memoranda).

Yes, sir; it does.

2. Is the opinion annexed to that abstract, sign "Pugo & Moss" the original opinion of those gentlemen?

Yes, sir; it is in my handwriting.

3. As far as you can recall, was the usual custom of the Wright-Blodgett Co. in dealing with patents which has heretofore been described by you followed in this case?

Yes, sir; the abstract in this case was brought in after the deeds had been recorded, showing title in the Wright-Blodgett Co., Ltd.

4. As far as you can recall, the usual custom of bringing the title in first and bringing the abstract completed afterwards was followed in that case.

Yes, sir; to the best of my recollection.

5. How many titles, all told, did you pass on for Wright-Blodgett Co.?

So many, it would be impossible for me to approximate the number. In some cases smaller abstracts would be brought in than this, showing the issuance of final receipt, and then Mr. Kelly, or whoever was in charge at the time, would have a single abstract made up showing the ownership in the company of the number of prior transactions that had already been examined by us.

143 In connection with the testimony of the witness, counsel for defendant offered in evidence abstract and opinion of Pugo & Moss, attorneys, marked "W-B Co. 1," reserving the right to withdraw the abstract and opinion for reoffering in the Allen and Hicks cases.

(The admission of the document in evidence is objected to, on the ground that it is part of the books and records of the company and is inadmissible in the evidence on their own behalf).

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144 J. J. HICKS, witness in behalf of complainant, being duly sworn, testified as follows:

(The following testimony is to be used on the question of good or bad faith in all the cases in which Wright-Blodgett Company is defendant—this being dictated by counsel for government, but being strenuously objected to by counsel for defendant).

#### Direct Examination.

By Mr. Mills:

1. Mr. Hicks, where do you live?

A. At Leesville in Vernon Parish.

2. How long have you lived there?

A. I moved to Leesville the 3rd day of July, 1899.

3. Did you make a homestead of any lands in Vernon Parish?

A. Yes, sir.

4. How many?

A. One.

5. When did you make that entry?

A. I don't know, exactly.

6. Do you remember about when?

A. I think in 1899. It was in the fall after I moved to Leesville in the summer, I think.

7. Do you remember the description of the land you homesteaded and the numbers?

A. No; I do not. I believe it was of Section 8, either the southeast or northeast quarter.

8. Section 8, and what township?

A. 2 North, Range 5, I think.

9. How did you come to make this entry, Mr. Hicks?

A. I did it of my own volition, for a homestead.

10. When did you first learn that this land was vacant?

A. Only a short time before I made the entry.

11. Through whom did you learn that this land was vacant?

A. Through J. M. Boyd.

145 12. Where was Mr. Boyd living at that time?

A. In Vernon Parish, about Cora post-office.

13. Do you know what was his occupation?

A. U. S. Commissioner.

14. Do you know whether he did any other work at that time or not?

A. No, sir; I do not know.

15. You learned through Mr. Boyd that this land, Sec. 8, T. 2, R. 5, was vacant?

A. Yes, sir; I asked him to look up a vacant homestead.

16. Did you make the entry at the land office?

A. Before the clerk of Court at Leesville.

17. What steps did you make to perfect that entry?

A. After making the entry within a short time I hired the improvements put on it--had houses built, rails split and about two acres of land cleared.

18. Who did you hire to do this?

A. I hired Mr. Laerence. I don't remember but that Mr. Bass assisted him.

19. When did you move upon this land to take up your residence?

A. My first visit to the land after the houses were completed, must have been sixty days, may be ninety days, I don't remember, but it was only a short length of time.

20. Did you maintain a residence anywhere else?  
 A. My home was in Leesville.
21. Were you a married man?  
 A. Yes, sir.
22. Had a family?  
 A. Yes, sir.
23. Where did your family live?  
 A. Leesville.
24. Where was your actual residence during the time of this homestead?  
 A. Leesville.
25. How often, if at all, did you go upon this homestead?  
 A. Once about every four months, to the best of  
 146 my recollection.
26. You would visit the land once every four months?  
 A. Yes, sir.
27. Would you stay any length of time?  
 A. Spent the night.
28. That was the extent of your residence on this land?  
 A. Yes, sir.
29. How was this house furnished that you had on the land?  
 A. I don't remember so long; not much, a chair or two and a bedstead.
30. Any cooking stove?  
 A. No, sir; what cooking we did was in a fireplace—old style.
31. What crop did you raise on this land?  
 A. I raised one crop.
32. Did you raise it yourself or hire it raised?  
 A. Hired it done. Raised corn and some peas with the corn; also had some fruit trees, probably half a dozen or more.
33. Was the crop ever cultivated?  
 A. I don't know about that. Mr. Allen, my brother-in-law, who had a homestead adjoining this, looked after that part of it.
34. Do you know of your own knowledge whether this crop was ever harvested?  
 A. I do not.
35. How many seasons was this land cultivated?

A. One.

36. Did you ever prove this entry in any way? Ever take out any final papers?

A. Yes, sir; commutation homestead proof.

37. In making this commutation homestead proof, do you remember the time you made it, the date?

A. In 1901, I believe.

38. You are not positive about the date?

A. No, sir.

39. In making this commutation of your entry,  
147 was it necessary to pay any sums of money to the government?

A. Yes, sir.

40. How much?

A. Right around \$400.00 for each entry.

41. Where did you get the money?

For emphasis, the objection is here made that this testimony is irrelevant as it does not tend to prove or disprove any fact or allegation set forth by the pleadings at issue in this case).

A. Mr. Dickens, who was in the employ at that time of the Wright-Blodgett Co. visited Leesville frequently and a short time before the fourteen months' period had expired he asked me something about the homestead, and I told him, "Yes; I have a homestead," and he asked me then

(Objection here made by defendant on account of hearsay).

(Counsel for complainant asserts that by testimony heretofore given in this case it has been shown that Thos. B. Dickens was the agent and employe of the Wright-Blodgett Co., and that, therefore, this statement is directly applicable to the issues involved in these suits).

what I was going to do with the land. I told him I guess I would sell it after I made my proof. The question then came up as to the commutation money and Mr. Dickens remarked, "I will loan you the money." I told him, "All right," and after I had received my final receipt Mr. Dickens came to Leesville and made me an offer on the land, which I accepted.

42. In compliance with his promise of Mr. Dickens, did he ever loan you or advance you any money?

(Objected to, on grounds of irrelevancy).

148 A. Yes, sir.

43. State the circumstances, amounts, etc.

A. Well, three or four days as well as I remember, before the day for making the proof I wrote Mr. Dickens that I would need about \$200.00. He sent me check for that amount. Upon forwarding the proof together with that amount of money to the land office at Natchitoches, I was advised by the officials that the land was situated out of the \$1.25 limit, and that I would be required to pay \$2.50 per acre, and to the best of my recollection I mailed Mr. Dickens the letter that I had received from the land office and he mailed me check to cover the balance.

44. Where did you address Mr. Dickens?

(For the purpose of emphasis the objection of irrelevancy is again urged against this testimony with the suggestion that the bills in this case set up for grounds of attack upon the patent, merely failure to live upon the lands and make improvements, and that the alleged statements of Mr. Hicks and Mr. Dickens pertain to questions not raised by the pleadings and are hence irrelevant).

(Counsel for complainant asserts the materiality of this testimony upon the issue joined by the bill and answer as to the good and faith on the part of the Wright-Blodgett Company, and is offered for the purpose of showing guilty knowledge upon the part of Wright Blodgett Company at the time of and prior to the purchase of these lands through its agent, Dickens, and through its agents, Kelly and Wazey).

A. Lake Charles.

45. Do you know for whom Mr. Dickens worked at that time?

(Objected to unless witness knows of his own knowledge).

A. I know from hearsay.

46. From his own statement?

A. I only know by this: I was clerk of court and

149 Mr. Dickens visited my office frequently, looking after matters pertaining to deeds conveying lands to Wright-Blodgett Company.

47. Did Mr. Dickens state to you whether or not he was furnishing you this money for commutation of land, personally, or for some one else?

A. I do not know.

48. After the commutation of this land, did you receive any final receipt or receiver's receipt?

A. Yes, sir.

49. Did you ever make a sale of this land?

A. Yes, sir.

50. To whom?

A. Wright-Blodgett Co.

51. Examine this and see if it, to the best of your knowledge and belief, a correct copy of the act of transfer?

A. I could not say. I believe it was on a printed form.

52. Is this a correct copy?

A. Yes, sir; I am sure—in fact, I know—it is the deed of 1901.

53. You sold the land to Wright-Blodgett Company?

A. Yes, sir.

54. Who represented Wright-Blodgett Co. in the making of this sale?

A. Mr. Dickens.

55. This deed recites that it is made for a consideration of \$800.00. Was that amount paid you for the land?

A. Yes, sir.

56. Was it paid in cash?

A. Yes, sir.

57. State whether or not it is a fact that upon the making of this sale you were paid \$800.00 in cash, or \$800.00 less the amount already advanced you for commutation?

A. I was paid the amount less the checks sent me before.

58. Then, the money advanced you by Dickens for commutation of this land was applied when the land was sold Wright-Blodgett Co. as part of the purchase price?

A. I believe it was.

150 59. Don't you know?

A. Yes; I know it was by their deduction.



60. Did Mr. Dickens at any time before the commutation or after or before the sale or after make any inquiries of you as to what extent you had complied with homestead laws regarding this land?

A. No, sir.

61. How often did Mr. Dickens come to Leesville?

A. He was there quite frequently. I don't remember. Sometimes sixty or ninety days, at other times once a month.

62. You were living openly with your family at Leesville?

A. Yes, sir.

62. Was Mr. Dickens ever at your home?

A. Yes, sir.

64. Do you know from statements made by him whether or not he was aware that you were living at Leesville?

A. He must have known.

65. You were clerk of court at the time?

A. I was.

66. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see if it was probably settled or lived upon, or the homestead laws were complied with?

A. I do not know.

67. Do you know Nat Wazey?

A. Yes, sir; I did know him.

68. How long had you known Wazey at the time you commuted this land?

A. I think I met Mr. Wazey before I was elected clerk of Court, about the time I began work for Mr. Winfree in 1899.

69. Did you ever have any talks with Mr. Wazey regarding this land?

A. No, sir.

70. What was Mr. Wazey's occupation?

A. I didn't know; I heard afterwards. Everybody seemed to know he was buying land for Wright-Blodgett Co.

(Objected to, on the ground of irrelevancy and on the ground that it [is] hearsay of the rankest character).

151 71. Do you know where Nat Wazey lived?

A. No, sir; I cannot say [say] that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the filed of Mr. Waezy's activity and occupation for the Wright-Blodgett Co. was?

A. Well, principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory, I think. That is where he bought the principal part of land.

74. Mr. Hicks, during the life of your entry before the sale of the land to Wright-Blodgett Co., was or not Nat Wazey frequently in the clerk's office at Leesville?

A. Up to that time, not very often.

75. Was he there, occasionally?

A. Yes, sir.

(Objected to as leading).

76. Was Wazey ever at your house?

A. No, sir.

77. Do you know from his acts or words that he was aware of your living there?

A. I do not.

78. Do you know whether he was aware that you were clerk of court at Leesville at the time he would file deeds and papers with you?

A. Yes, sir.

79. How far was this homestead of yours from Leesville?

A. In the neighborhood of 2 0miles. About 20 or 25 miles.

80. Any railroad connecting the places?

A. No, sir.

81. Any trolley lines of any kind?

A. No, sir.

82. How long would it take you to make a trip from your homestead to Leesville?

A. About five hours.

83. By what method of travel?

A. Buggy.

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Cross-Examination.

By Mr. Monroe:

1. Mr. Hicks, I understand that on your homestead there was a good house with furniture and bedding and a fire-place?

A. There was no bedding, but furniture and a fire-place.

2. Was there a bedstead in it?

A. Yes, sir.

3. If I understand correctly, this house was known as a double-pen house and was built directly on the line between your homestead and W. O. Allen's homestead?

A. Yes, sir.

4. W. O. Allen lived in part of that house during the life of the entry?

A. Yes, sir.

5. W. O. Allen's is your brother-in-law?

A. Yes, sir.

6. During that time there was a certain acreage of land fenced in and cultivated?

A. Yes, sir.

7. I suppose you had a well and a hog-pen?

A. Yes, sir; we got good water from the spring.

8. Good water in the neighborhood?

A. Yes, sir.

9. Had you any out-buildings, any corn-crib?

A. I did not. Mr. Allen had a corn-crib.

10. What family did he have?

A. Wife and one child.

11. You went out every once in a while and stayed several days—a week?

A. Well, one day and night was all the time I had to spend there.

12. I think Mr. Winfree said you had stayed there two weeks. Is he correct?

A. I had frequently spent two weeks looking after matter pertaining to my stock, cattle and matters of that kind, and during the time I would visit my homestead.

13. And these cattle were around on this acreage?

A. Yes, sir; in the cattle range.

14. During the life of your homestead your fences and house were kept in order?

A. Yes, sir.

15. I suppose Mr. Allen and his family kept your part looking habitable and clean so that you would find a clean place to sleep?

A. Mr. Allen looked after my part of it while he was there.

16. You say you made 16-mile ride day before yesterday in 2 1/2 hours?

A. Yes, sir.

17. Now, between friends, Mr. Hicks, don't you think you were laying it on thick when you said it took you five hours to drive twenty miles to your homestead?

A. It frequently took me all day. I had friends on the road where I would stop and lose time.

18. You were in politics in that part of the parish at the time, and in making these political pilgrimage it would frequently take five hours or longer, I suppose?

A. Yes, sir.

19. But at a good, hard drive, how long?

A. Four hours in a single rig. If I was going after a doctor in Leesville I could make it in 2 1/2 or 3 hours. Four miles an hour was a good average gait for that country.

20. Mr. Hicks, one thing I want to straighten out. The government has alleged that your entry dated October 9, 1898. I understood on your direct examination that you said you thought it was in 1899. Did you speak from recollection?

A. Yes, sir; I would not be positive about it. It was after I moved to Leesville. I might have moved there in 1898 instead of 1899. The records will show.

21. When did you first know Mr. Dickens?

A. I knew him after I was elected.

22. Clerk of court?

A. Yes, sir; in 1900.

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## Re-Examination.

By Mr. Elstner:

1. Do you know how long Mr. W. O. Allen resided with his family on the homestead entry?

A. Mr. Allen moved from Leesville with his family with the intention of moving directly on his homestead, but after reaching my mother's his wife's health failed and he was in bad health, too, and he occupied a house about three miles from his homestead on account of being near a doctor; but he worked the land on his homestead and visited it frequently.

2. To your own knowledge did he, with his family, reside upon his homestead at all?

A. No, sir.

3. How much of that land did Mr. Allen cultivate?

A. About two acres. That is, about four acres all told, about two acres on his part.

4. How many crops did he raise?

A. Only one, I am pretty sure.

5. You know of what that crop consisted?

A. I do not.

6. Do you know whether it was cultivated or not?

A. No, sir.

7. Mr. Hicks, was the crop either on your place or on the place of Mr. Allen cultivated in a manner in which a farmer usually cultivates his crop?

A. Well, about an average for that part of the country. I hired mine cultivated. Had a two-bit pony and a two-bit plow.

8. And you raised about a two-bit crop?

A. Yes, sir; a few barrels of corn, but I don't remember just how much. Mr. Allen looked after it.

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#### Recross Examination.

1. Did I understand your testimony to be that Mr. Allen had not lived in the house there at all?

2. [A.] He did not live there with his family. He only visited it but was there a great many times.

2. Did he sleep on the place frequently?

A. Yes, sir; every time I was there and I think I heard him say he stopped over there between the times we were together.

3. Then, as I understand your testimony, Mr. Allen would stop and reside there as much as his wife's health would permit him.

A. She never spent the night there.

4. During his absence at night at that place his wife was sick some distance away?

A. Yes, sir; he left Leesville with the intention of staying there, but had to stop on account of his wife.

5. But he stayed there and slept there at all times except when his wife's condition required him to be with her?

A. No; he did not do that.

6. What did he do?

A. As I before stated, on account of his wife's illness and

he, himself, being in bad health, he did not move into this house on the homestead as he had intended doing; but he was with me every night I stayed there and slept in his end of the house. And I have understood from him that he was there at times between the times we were together there.

7. Mr. Hicks, had you or Mr. Allen any reason to believe that you had not complied with the law in regard to homesteading?

(Objected to, because that is a conclusion of law to be drawn by the Court from the facts in the case, and it is not competent for the witness to state his opinion about it).

156 (Mr. Monroe:

"Mr. Examiner, I will ask that you instruct this witness that counsel for government has the privilege of making what objections he sees fit, but that he, the witness, is to make his answers just as if no objection of any kind had been made.")

(On request from counsel for defendant the Master instructed the witness as follows: "I instruct Mr. Hicks to answer the questions as asked by counsel for defendant, as if no objection had been made.")

A. At the time we made our homestead proofs we were of the opinion that proofs were all right, as it was customary for the answers to go into the proof that claimant had not been absent six months at any one time. We did not know but what the proofs were all right until the matter was presented to the Court.

8. You honestly thought they were all right and acted in perfectly good faith?

A. Yes, sir.

9. Have you had any talk with any government official or agent relative to this case?

A. Well, very little. I talked with Mr. Elstner, some, in a general way.

10. Did you give a written confession of judgment against you in this Hicks case?

A. I did.

11. Did you give that on any terms or conditions?

A. No, sir; nothing more than my understanding that this would possibly end the case.

12. Was it your understanding that there would be no effort toward prosecution by the United States?

A. Yes, sir; that the patents would likely be cancelled and that the Wright-Blodgett Co. would have the privilege to lay script on this land or take it up any other way they might see fit.

13. And it was with that understanding on your part that this written confession of judgment was signed by you?

A. Yes, sir.

157 14. Now, Mr. Hicks, you are a man of considerable standing in your community and have been elected to various public offices, have you not?

A. Yes, sir.

15. No one in that community had any reason to suppose that at the time you were making your commutation proofs during 1901 that you, by word or deed, would fix your signature to any statement that was not thoroughly correct in every respect?

A. No, sir.

16. Your character in the community had been without stain of any kind?

A. Yes, sir.

(It is admitted that Mr. Hicks was a man of unquestioned good standing in the community so far as is known to the U. S. attorney or his assistant, and that there has never been any other charge of any character, whatever, brought to the attention of the U. S. attorney except in the matter referred to in the examination of this witness by the counsel for the defendant).

#### Redirect Examination.

By Mr. Elstner:

1. Mr. Hicks, did you ever at any time have any understanding with me as U. S. attorney that the Wright-Blodgett Co. would have any privilege growing out of this transaction locating the lands involved either in your homestead or the homestead of Mr. Allen, except as would accrue to the right of any American citizen when those lands should be, if they were, returned to the public domain?

(Objected to as leading).

A. I thought I had covered that point already. It was my own conclusion. I naturally knew that they would, of course, protect themselves.

2. You have known me for a long time, have you not?

A. Yes, sir.

3. You were a witness before the Federal Court  
158 at Alexandria in regard to the number of perjury cases growing out of land transactions?

A. Yes, sir.

4. Without putting you upon the stand or putting you under any oath, have I not accepted your statements to me as an individual without question?

A. Yes, sir.

5. Did you not state to me, as a matter of fact, that neither you nor Mr. Walter O. Allen were sworn at the time of making commutation proof in the cases of Hicks and Allen?

A. Yes, sir.

6. Did you not know, as a matter of fact, that along about the time of assigning this consent pro confesso that you were not to be prosecuted in this case?

A. Well, I don't remember, Mr. Elstner, any direct statement to me, but reading between the lines I supposed there would be no prosecution.

7. Were you not aware of the fact that you had not been sworn and that I, as U. S. attorney, was aware of that fact?

A. Yes, sir; I was aware of the fact that I was not sworn. I did not know that you knew it.

8. You had no reason to believe that I discredited your assertion that you had not been sworn?

A. No, sir.

9. You know that the proof in the cases of J. J. Hicks and W. O. Allen were both made before J. M. Boyd?

A. They were.

10. Do you know Mr. Boyd?

A. Yes, sir.

11. Do you know that it is currently reported and has been asserted by Mr. Boyd that he never swore any witness; that he did not think it necessary, that it was merely a matter of form?

A. Yes, sir.



12. Were you present at the Court at Alexandria  
 159 when J. M. Boyd, U. S. Commissioner, was called  
 as a witness to prove the administration of an oath  
 by him as such official to the homesteader and his witnesses in  
 the case of commutation proof, and heard him state under oath  
 that he regarded this proof as a mere matter of form and never  
 inquired the parties to be sworn?

A. I was.

(It is conceded on the part of the government that these  
 commutation proofs bore the certification of the several officers  
 before they were taken that the oath was administered).

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160 Testimony of WALTER O. ALLEN, witness in  
 behalf of complainant.

Direct Examination.

By Mr. Mills:

1. Where do you live?
- A. Leesville, Vernon Parish.
2. How long have you lived there?
- A. Since 1889.
3. Do you know Joe J. Hicks?
- A. Yes, sir.
4. How long have you known him?
- A. Twelve or fourteen years.
5. Are you related to him?
- A. By marriage; he is my brother-in-law.
6. Do you know where Mr. Hicks was living during summer  
 and fall of '98?
- A. In Leesville.
7. Was Mr. Hicks married at that time?
- A. Yes, sir.
8. Did he have a family?
- A. Yes, sir.
9. How large?
- A. Four children.
10. Did his family live with him at Leesville?
- A. Yes, sir.

11. From that time on how long did he continue to live there?

A. Up to the present time.

12. Has he ever resided anywhere else that you know of?

A. No, sir; not that I know of.

13. Do you know of your own knowledge whether or not any time in 1898 or 1899, Mr. Hicks made any homestead entry in Vernon Parish?

A. Yes, sir.

14. Do you know whether he made more than one?

A. Only one homestead.

15. Do you remember the description of that  
161 land?

A. Northeast quarter section (I don't remember the section); Township 2, Range 5, West.

16. Did you make any homestead entry, yourself?

A. Yes, sir; adjoining that. The southeast quarter of same section. His was the northeast quarter.

17. Do you remember when your entry was made?

A. No; I don't remember now.

18. Did you and he make your entries together or at the same time?

A. He made his a little before I did, I believe.

19. Do you remember when you made yours? Approximate the month and year.

A. Sometimes in 1898, I believe; I don't remember, exactly.

20. Do you remember what improvements Mr. Hicks put on his homestead?

A. He and I made a combination house—a double house—on the dividing line, one-half of the house on each side.

21. What other improvements were made on his side, if any?

A. We made an entire enclosure of about two acres, that is, half on each side of the dividing line.

22. Did Mr. Hicks ever plant any crop that you know of?

A. Yes; some peas were planted on it.

23. Did he plant that lot of peas, himself, or hire it done?

A. I could not say now; I don't think he planted them.

24. Do you know whether this crop ever matured and was harvested or not?

A. It never matured to make enough for the seed that was put in the ground.

25. Was it cultivated in any way or any attention paid to it after planting?

A. Not to amount to anything.

26. How often did Mr. Hicks, to your knowledge, go from his home in Leesville to this land?

A. At intervals of three, four, five or six months.

27. Did he take his family with him on these trips?

A. I never saw any of his family there.

28. How long would he stay upon the land on the occasion of these periodical visits?

A. Twelve to thirty-six hours. Sometimes that included the entire time gone, coming and going.

29. Did you ever know Mr. Hicks to stay upon this land for any longer period than that?

A. No longer than twelve or fourteen hours that we would be together. He would stay over night about five in the evening until early next morning.

30. Then, the only actual length of time that you ever knew Mr. Hicks to be on that land was a periodical visit every three, four, five or six months and he would then stay over-night?

(Objected to as leading).

A. Yes, sir; and he would stay over night.

#### Cross-Examination.

By Mr. Monroe:

1. You say you and Mr. Hicks had a double house, what is commonly called a double-pen?

A. Yes, sir.

2. Any doors or windows?

A. Doors, but not the windows.

3. Was the enclosure actually fenced in?

A. Yes, sir.

4. Any out-buildings?

A. A stable.

5. Did you have any orchard trees planted?

A. Yes, sir.

6. What else did you have planted in the enclosure besides peas and trees?

A. A little corn at one time.

7. Were a few barrels of corn made in the enclosure?

A. A few barrels, I never saw it.

163 8. Mr. Hicks stated that there were a few barrels of corn made.

A. I didn't see any.

9. Mr. Hiens stated that you and your wife started out to live in that double-pen house and that your wife was taken sick?

A. That is correct.

10. To what extent [extent] did you live in that double-pen house?

(Objected to by counsel for government, on the ground that any residence by Mr. Allen on his homestead is irrelevant in this case).

A. At about the same intervals as in Mr. Hicks' case—two or three or four months apart. I would stop over a night or a day.

11. Did you, personally, do any work in the field inside that enclosure?

A. I never did; that is, in the fields.

12. What work did you do there?

A. I planted the trees, built fences and out-houses.

13. Where were these out-houses, on your side or Mr. Hicks' side?

A. On my side of the line.

14. When you made your commutation proofs, Mr. Allen, at that time, didn't you and Mr. Hicks verily believe that you had complied in all respects with the law?

(Objected to by government as to what Mr. Hicks believed, on the ground that it could be only hearsay).

A. Yes, sir; that is my impression. I don't know what Mr. Hicks thought.

15. Did any of your family or Mr. Hicks family remain for any length of time in that house besides you and Mr. Hicks?

A. My wife and child did.

16. How long did they stay?

A. One night and part of the next day, one time.

17. Where was the spring in that neighborhood?

A. A little branch rang [ran] through the adjoining forty on the west.

18. Was there a spring on Mr. Hicks' forty?

164 A. No; on the opposite side, on the north side.

19. If he testified that there was a spring there, would you contradict it?

A. If there was it was in the north side of the forty. I was on the south side and it was a half mile away, and I never went to it if there one there.

#### In Hicks Case—No. 382.

In this case counsel for government offers a copy of the records of the general land office of the department of the interior, showing the various papers filed and issued in the matter of the homestead entry of J. J. Hicks, #21,228, and rests his case.

#### In Hicks Case—No. 382.

In this case counsel for defendant offers the patent marked "W-B Co. P." and rests his case.

165 GREEN FOSHEE, witness in behalf of complainant, being duly sworn, testified as follows:

(Counsel for complainant asks that the testimony of Mr. Foshee be inserted in each of the nine cases).

(Counsel for defendant objects, on the ground of irrelevancy).

(Mills):

1. Where do you live?

A. Vernon Parish.

2. How long have you lived there?

A. Nearly all my life; a long time.

3. Near what towns do you live?

A. Pitkin.

4. How long have you lived at Pitkin?

A. For six or seven years' exception I have lived in the neighborhood of Pitkin ever since I was seven or eight years old.

5. Did you know Nat Wazey?

A. Yes, sir.

6. Did you know the Widow Graham?

A. Yes, sir.

7. Do you know, of your own knowledge, whether Nat Wazey ever bought any improvements on land from the Widow Graham?

A. Yes, sir.

8. When was that?

A. I could not say right, positively; about 7 or 8 years ago to the best of my knowledge. I can't say what date.

9. Do you know where the Widow Graham lived at the time?

A. Yes, sir.

10. Where?

A. At the time he bought her improvements she was living on a creek that we called Ten-Mile.

11. What section?

A. I couldn't tell you what section.

12. Were you present when Wazey bought her  
166 out?

A. I was present when he made a contract with her to buy the property from her.

13. Did he make any statements at the time as to why he wanted to buy the improvements?

(Objected to as hearsay).

A. I can't hardly say that I recollect.

14. Did he at any time ever tell you why he wanted those improvements?

(Objected to as hearsay).

A. Yes, sir.

15. What did he tell you?

A. That he had homesteaded the place and he didn't want to take it away from her without paying her for it.

16. Then, from his statements you were led to believe that he had already made a homestead entry on the land before he bought her improvements?

(Objected to as leading).

A. I think he had; yes, sir.

17. After this purchase did the Widow Graham continue to live there or move off?

A. She moved off some time after. I don't remember just how long. Some two or three months.

18. After she moved off of this land, did any one else move on that you know of?

A. No, sir.

19. At the time that Nat Wazey purchased the improvements from Mrs. Graham, where was he living?

A. Well, I couldn't hardly tell you. He was a timber man and he was over the country in different places at that time.

20. Do you know where his home was at that time?

A. No, sir; I do not.

21. Do you know of any place in that country that he lived or had a home about that time or short time afterwards?

A. Afterwards I did.

22. How long afterwards?

167 A. I can't say, positively, but to the best of my knowledge over 4 mos.

23. During the 4 months after purchasing these improvements from Mrs. Graham, where was he living?

A. At that time he moved his family near a little place called Pitkin, now.

24. What was it called then?

A. Weldon's place at that time.

25. How long did he live there?

A. I am unable to say.

26. Estimate it, please.

A. I don't think he stayed over two or three months.

27. How far was this place from the Widow Graham's?

A. I always called it 12 miles. I don't think it was quite that far.

28. Where did Wazey live after leaving Weldon's place?

A. He bought improvements from Dr. Stallsby on a place about 2 or 2 1/2 miles east of the place he was living at that time.

29. After buying this place did he move there and live there?

A. Yes, sir.

30. How long did he live there?

A. I can't say, I don't remember.

31. A day or a year?

A. A couple of years, may be longer. He was there as long as I was in that section of the country.

32. Did you ever know him to live at any other place in that country, except on the Weldon place and on this place he got from Stallsby?

A. No, sir; of course, he was away from there half the time, because he was working for some other parties and he was at home very little, himself, but his family was there most of the time.

33. How far was this place he bought from Stallsby from the property on which was located these improvements bought from Mrs. Graham?

A. It would have been eight or nine miles. We called the distance over the road, I couldn't say, exactly.

34. Do you know of your own knowledge or from statements made by Wasey, whether he ever made a homestead entry on this land on which were situated the improvements bought from Mrs. Graham?

A. Yes, sir; I think he did. He told me he did.

168 35. Do you know whether he ever commuted that entry or took any steps to prove it?

A. I did not at that particular time.

36. Do you now.

A. Yes, sir.

37. How do you know it now?

A. I know it now by showing that I was a witness, and I was arrested for being a witness on that homestead.

38. Were you a witness on his final proving up and examination of that land?

A. If I was I didn't know it.

39. Have you any recollection of being questioned by any one as to the residence on or cultivation of this homestead of Nat Wasey's?



A. I have not.

40. Have you any recollection of taking any oath or signing any paper in regard to it?

A. I didn't take any oath, but I cannot say I did not sign any paper, because Nat would come to me quite often to sign papers for him.

41. And did you sign without reading them or knowing what they were?

A. Yes, sir; most of the time. I can't read much. I haven't much education. I signed all that I thought were land deeds. I ran a little store and he would bring parties there and ask me to sign paper and I didn't see any harm in it, and would always sign the papers he asked me to sign.

42. What statements did he make to you about what these papers were and why he wanted you to sign them?

A. I signed a good many where he just opened the paper and said, "Sign on this line," and I have heard other parties talk about deeds and heard agreements between them.

43. Did Mr. Wazey ever state to you or in your hearing, whether or not he was having deeds made to himself or for other parties or firms?

(Objected to as hearsay).

A. People he was working for.

44. Who was he working for?

(Objected to as hearsay).

A. Wright-Blodgett Company.

45. How do you know that?

A. Why, I know or I think I do, because there were some of them in there and he always told me he was working for them, and I saw them all in there quite often.

46. Do you know Mr. Michael Kelly here?

A. Yes, sir.

47. Was he ever in your vicinity?

169 A. Yes, sir.

48. Was he there anywhere around the time of this Wazey homestead entry?

A. I think he was.

49. Do you know what Kelly was doing there in that vicinity?

A. They were took to be timber people.

50. Did you ever see Kelly with Wazey?

A. Yes, sir.

(Objected to as hearsay).

51. Often?

A. I couldn't say anything about the times; several times.

52. When Mr. Kelly would go into that country, with whom would he stay?

(Objected to as hearsay).

A. Mr. Wazey.

53. How do you know that?

A. I have seen him there and have heard Wazey tell about his being there when I have not seen him.

(Objected to as hearsay).

54. Did you ever sign any papers for Kelly?

A. I don't remember that I ever did. I wouldn't say that I did or didn't.

55. Was Mr. Kelly ever around when you signed deeds or papers for Wazey?

A. I can't undertake to answer that question.

56. When Mr. Kelly was in your vicinity, did you ever see him going around or having any business dealings with any one but Nat Wazey?

A. I don't think I can give a correct answer to that. I have seen Mr. Kelly talking with other people, but whether it was on business or not I don't know that I could hardly be able to say.

57. Did you ever hear of any conversations in regard to land matters between Kelly and Wazey.

(Objected to as hearsay).

A. I don't know that I ever did. I always thought that

they seemed to be pretty particular in their way of doing business.

(Objected to as hearsay).

58. Did you ever hear any conversation between them in regard to land matters?

A. I couldn't say, positively. Mr. Kelly always  
170 seemed to be pretty particular about talking to any one. I never heard him get out and express himself. I never heard him, while in his presence, talk about his business. He was always joking or something like that.

59. Did you ever hear Nat Wazey make any statement or say anything in regard to what he intended to do with his homestead after proving it up?

A. No, sir.

(Stenographer's Note—It was just at this point in Mr. Foshee's testimony that Mr. Mills instructed me to insert his (Mr. Foshee's) testimony in all the cases, and Mr. Monroe objected, on the ground of irrelevancy. See page 1 of this testimony).

#### Cross-Examination.

By Mr. Monroe:

1. Do you know any relatives of Nat Wazey by the name of Clingo?

A. No, sir.

2. What brothers or sisters did he have at his death?

A. I don't know whether he left any sisters or not; he left a brother.

3. What is his name?

A. John.

4. Any other brother?

A. I think he had another; I don't know his name.

5. \*Is his mother living?

A. I don't know.

6. Is M. Waezy living?

A. I don't know.

7. Is George Wazey living?

A. I don't know him.

8. Do you know whether Nat Wazey bought more than one set of improvements from Mrs. Graham or not?

A. I don't know.

9. Do you know of your own knowledge?

A. If she had but one I don't know it.

10. You don't know whether she had or not?

A. No, sir; if she had but the one I don't know it.

11. Are you prepared to swear that you did not sign your name on the commutation proof of Mr. Wazey?

12. I hand you a copy of the Times-Democrat of February 26th, please read the head line of the first column?

A. I don't know that I can.

13. Well, try it.

A. I can't read it good enough.

14. What is on the first line?

A. Why, that is "Navy Yard Commission" or something like that.

15. Second line?

A. "President Appoints Men to Investigate Conditions" or something like that.

16. The next line?

A. "He Disregards and Defies Congress by this Act."

17. On the next line?

A. "Roosevelt Determines to Discontinue Southern Yards."

18. Will you take that sheet of paper and write your name and address on it the best you can?

A. Yes, sir. (Which he does).

19. How do you spell "land?"

A. I am not very good on spelling, but I reckon L-a-n-d.

20. How do you spell "house?"

A. H-o-u-s-e.

21. How do you spell "improvements?"

A. I-m-p-r-o-v-e-m-e-n-t-s.

22. How do you spell "crop?"

A. C-r-o-p.

23. How do you spell "clear?"

A. C-l-e-a-r-e.

24. How do you spell "season?"

A. I don't know that I can spell it.

25. Try it.

A. S-e-a-s-e-n.

26. How do you spell "resience?"

A. R-e-s-i-d-e-n-c-e.

27. How do you spell "cultivated?"

A. C-u-l-t-i-v-a-t.

28. Mr. Foshee, can you swear, positively, to it,  
172 as a fact, that you ever saw Mr. Kelly in your neighborhood between February 9, 1900, and May 14, 1901 [1901]

A. No, sir; I cannot remember what dates he was there. I saw him several times, but I cannot say what dates.

29. Can you swear, positively, to it, as a fact, where Nat Wazey was living between February 9, 1900, and May 14, 1901?

A. As to the times, I cannot tell you just exactly what date. I cannot remember dates. As I have stated, Mr. Wazey was all over the country and I cannot say where he was lots of the time.

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173 ED. DYAL, witness in behalf of complainant,  
being duly sworn, testified as follows:

(Mills):

1. Where do you live, Ed.?

A. Elizabeth, on the Sante Fe Railroad.

2. What Parish?

A. Calcasieu.

3. In Louisiana?

A. Yes, sir.

3. [4.] How long have you lived there?

A. About a year.

5. Where did you live before that?

A. In Rapides Parish, about ten miles north of Elizabeth.

6. How long did you live there?

A. Around the place about ten years. I was born and raised there; not over three or four miles from there.

7. How far is that from Brushy Creek?

A. About eight miles.

8. What do you do in that country?

A. Mostly farming. I've been working for the Industrial Co. as laborer the last two years.

9. Did you ever know Nat Wazey?

A. Yes, sir.

10. How long ago did you first become acquainted with him?

A. I don't remember. It has been quite a little while. About seven or eight years ago; may be longer. I know it's been that long.

11. How long had he been in that country before you met him?

A. I don't remember; I don't think he had been there long.

12. Where was he living at the time you met him?

A. I think he was there a right smart little while before he moved his family there and was staying about, and I met him several times, but the first place I knew him to live was on Brushy Creek near Pitkin.

13. Were you ever on his place, there?

A. Yes, sir.

14. Did he have a home there?

174 A. Yes, sir; I suppose so.

15. You saw it?

A. Yes, sir.

16. Then, you know it?

A. Yes, sir; I seen him and his family living there, claiming it to be his home.

17. How long did he live there to your knowledge?

A. Something like two year.

18. Do you know whether or not Nat Wazey ever made a homestead entry in that country?

A. No, sir; I don't know any more than he told me he did.

19. Did he tell you where it was?

A. Yes, sir; on the Widow Graham's place, that was his homestead.

20. Do you know he made that entry?

A. No, sir.

21. Do you know whether he ever commuted it?

A. No, sir.

22. Did he ever come to you and ask that you be one of the witnesses?

A. No, sir.

23. Did he ever come to you and state that he was about to prove up his entry and was about to commute it?

A. No, sir; not that I recollect.

24. Ever come to you with any paper and tell you that this paper was to be used in proof upon his commuting his homestead entry, and that he wanted you to sign it as a witness?

(Objected to as leading).

A. If he did I don't remember it.

25. Did you ever sign any paper at all at his request?

A. I might have, but if I did I don't remember it. I ain't got any education at all and I can't sign my name, but probably I have signed papers for him.

26. How could you sign papers if you cannot sign your name?

A. Whenever I sign a paper some one else signs it and I touch the pen.

27. Ed, do you know this gentleman sitting here?

175 A. Yes, sir; I think I do. I think I have been informed his name is Mr. Kelly.

28. Did you ever see Mr. Kelly in the vicinity of Nat Wazey's homestead at Brushy Creek?

A. I don't remember that I have, but it seems I have met him betwixt where Mr. Wazey lived and Glenmora, in a hack. I am not positive.

29. Anybody else in the hack with him?

A. If it was I don't remember.

30. Did you ever see Mr. Kelly in that vicinity or country on any other occasion?

A. No, sir; I don't think I have.

(At this point counsel for government asks that this testimony be added to the testimony in all the cases).

(Subject to the right of counsel for defendant to object to it and for other causes).

#### Cross-Examination.

By Mr. Monroe:

1. Can you swear, positively, of your own knowledge that you did not sign Nat Wazey's commutation proof?

A. Yes, sir; if I did I don't know anything about it.

2. You don't know or don't remember?

A. If I signed it I didn't know what I was signing.

3. Have you had any conversation with any official of the government, relative to your testimony here?

A. Yes, sir; I don't suppose that I have except with this gentleman.

4. No one else but Mr. Mills?

A. Yes, sir; I have with Mr. Elstner.

5. Did you ever speak to Mr. Goleman about it?

A. No, sir.

6. You never spoke to any government inspector out in that country?

A. No, sir.

7. Any U. S. Commissioner?

A. I could have talked with some of those men and not have known it, but not to know it.

8. Aren't you testifying here under the understanding that if you do give your testimony here there will be no prosecution against you?

A. No, sir; it is not.

9. No intimation of that kind made to you?

A. No, sir.

10. Ed, have you ever been arrested?

A. Yes, sir.

11. For what?

176 A. I was arrested on the charge of being a witness on the Wazey homestead.

12. What happened to that case?

A. I don't know, I gave bond and was put in jail.

13. You was charged with perjury?

A. I don't know what I was charged with.

14. At the time you gave bond did you have any talk with any government official about testifying in that case?

A. If I did I don't remember it.

15. Was it intimated to you that if you would testify in that case that the charge against you would be dropped?

A. No, sir.

16. Was that ever been intimated to you or told to you at any time?

A. I don't think it has.

17. Have you ever been arrested at any other time?



A. No, sir.

18. Do you mean to tell me, Ed Dyal, that you have never been in the penitentiary for the killing of Sam Buxton?

(Objected to, on the ground that it is entirely irrelevant and has no tendency to prove or disprove any of the issues in this case).

(Counsel for defendant suggested that it might have some bearing on the credibility of the witness).

A. No, sir; not for the killing of Sam Buxton. I thought you meant had I been arrested since that arrest of this land proof. I have been arrested more than twice. I was put in the penitentiary; there was some people's sheep was killed and put in the creek above where me and my father lived and I was put in the penitentiary for that, and I had been arrested for the killing of Sam Buxton, too.

19. How long a time did you serve in the penitentiary?

A. Nine months.

20. In what year was that?

A. I don't remember; couldn't tell you how long it has been.

21. Was that the only time you have ever been in jail?

A. No, sir; I have been in jail before I was sentenced for the sheep. The first time I was ever in jail was for the killing of Buxton.

22. You were indicted and convicted?

A. I was not convicted. There was a warrant  
177 sworn out and I was arrested and put in jail.

23. What was ever done in connection with that matter?

A. The case was nolleprossed and put out. Pretty certain they never had any trial.

24. You don't know positively whether you were tried and convicted?

A. No, sir; not convicted.

25. What about Pink Buxton?

A. I was only jailed for that. Just accused of being an accessory in the killing.

26. Have you ever been in jail besides the times you have mentioned?

A. No, sir; I don't think I have.

27. Have you ever been arrested besides those times?

A. No, sir; I don't think so.

28. Do you mean you have been in jail so many times you cannot remember how many?

A. I think I have been in mail [jail] five or six times, but all on those cases.

29. Have you ever been indicted for perjury?

A. If I have I don't know it.

30. You cannot swear you have not?

A. No, sir; I cannot.

#### Re-Examination.

Mr. Mills:

1. How long prior to the time Nat Wazey came into the country was it that you had this trouble with the killing of Buxtons?

A. I don't remember how long, but it must have been something like seven or eight years.

2. How long prior to the time he came into the country was it that you were in the penitentiary on account of these sheep?

A. Must have been about—well, anyways six or seven years; something like that. I can't keep up with the dates.

3. Where were you when you were arrested on these charges?

A. In the same neighborhood.

4. These facts are generally known in all that community?

A. Yes, sir.

#### Recross-Examination.

Mr. Monroe:

1. You remember the yellow fever of 1898?

A. No, sir; I don't remember it.

2. Have you any way of fixing when you were in the penitentiary?

178 A. No, sir; I don't know that I have.

3. How old are you?

A. About 35 or 36 years old.

4. How old were you when you were sent to the penitentiary?

- A. I couldn't tell you.
5. You were a grown man?
- A. I was just about grown.
6. You had voted already?
- A. No, sir; if I had ever voted I don't know it.
7. Over twenty-one?
- A. No, sir; I couldn't have been over twenty-one, but somewheres along there.
8. Was the time you were in the penitentiary before the killing of Buxton or afterwards?
- A. Afterwards.

179 THOS. C. WINGATE, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Where did you live in March, 1901?
- A. In the Town of Leesville, Vernon Parish, La.
2. What was you [your] occupation?
- A. At that time I was dealing in timber land principally; buying and selling timber and estimating land.
3. Were you working for any particular company?
- A. I could not say that I was. I bought some land for several different companies, but I cannot recall to memory whether I was employed steadily by any one firm.
4. Did you buy and [any] land about that time for the Wright-Blodgett Co.?
- A. Well, I bought some for them. I closed up some trades for them, but I cannot say whether it was just in March, 1901, or not. We had so many transactions with people at that time that I cannot tell whether it was in March, 1901, or March, 1900, or March, 1899.
5. Do you remember the first time you ever did any work for W.-B. Co.?
- A. I cannot say that I remember unless I could see the deeds or papers or something to refresh my memory; I could not state positively just when I did the first work for them.
6. In about how many different transactions were you employed by them?
- A. I couldn't tell you.

7. Many or few?

A. Very few.

8. What was the nature of these transactions you managed for them? Explain fully as to your dealings, if you were paid for them, by whom and how much.

A. Most of the transactions with the company were in this way; parties would come and want to sell certain land to me. I would not have any money to buy it, and I would know it was lying the Wright-Blodgett territory and would write Mr. Kelly and tell him the description of the land and who offered it and he would write to me and state if he would want me to take it and he would give me instructions sometimes to close the trade out on certain pieces of land. He would pay me my commission.

9. Then in all the transactions you had for the company you simply acted as middle man and referred all matters for definite decision to Mr. Kelly?

A. That is correct. I had no authority to cruise the timber or anything of that sort. I would submit the matter to him and he would notify me if he wanted to purchase the property.

10. Do you know of anyone else in that town or  
180 community who was employed by the Wright  
Blodgett Co. in any capacity?

A. Well, I don't know. I think Mr. Boyd and Mr. Wasey and Mr. Dickens.

11. What Boyd was that?

A. Jas. M. Boyd.

12. What made you think that Jas. M. Boyd was employed by Wright-Blodgett Co.?

A. I don't think that at that time he ever told me he was employed for the company, but he has frequently told me in the last few years about doing certain things for Mr. Kelly—go and meet him on business somewhere, and I suppose it was on land matters.

13. Was Boyd also U. S. commissioner there at that time?

A. I don't know whether he was at that time or not, and I don't know even the date when he was commissioner. I know, however, that he was U. S. commissioner at one time?

14. Examine this copy of deed from Jas. D. Stallsby to Wright-Blodgett Co., dated March 26, 1901, and state if that

was one of the transactions in which you represented the Wright-Blodgett Co.?

A. I suppose I must have closed this transaction.

15. Does not your name appear on this deed as witness?

A. It does.

16. What name also appears on that deed?

A. Jas. M. Boyd.

17. The party you have been speaking about?

A. Yes, sir; it is.

18. Have you any recollection of how the consideration was paid in this case?

A. No, sir; I cannot, and could not unless I could see the original deed. The reason why I stated a moment ago that I must have closed up this transaction was for the reason that only this morning Mr. Stallsby told me that he sold this land through me to the Wright-Blodgett Co. I had entirely forgotten the transaction.

19. Mr. Wingate, did you ever in this case, or any other case, buy lands outright for yourself and then turn around and sell them to the Wright-Blodgett Co., or were deeds made direct to the Wright-Blodgett Co. and paid for by them?

A. I am sure that I sold Wright-Blodgett Co. some pieces of land that I acquired in my own name and with my own funds.

20. If the papers in this case show that this piece of property transferred from Mr. Hester to Mr. Stallsby to the Wright-Blodgett Co. could you state whether or not you paid for these lands with your own funds or not?

(Objected to as leading.)

A. I have no recollection of paying Mr. Hester nor Stallsby for this tract of land with my own funds.

21. If you did advance the money to Mr. Stallsby  
181 to pay for this tract of land do you know whether  
or not you were reimbursed by Wright-Blodgett Co.?

(Objected to as leading, calling for the opinion of the witness and suggestive of the answer.)

A. I think I can answer that positively because the Wright-

Blodgett does not owe me a cent, and if I ever was advanced anything on their account they reimbursed me.

22. State whether or not it was your custom in these matters after you had been notified by Kelly and authorized to go ahead and make the trade for the company, did you not on some occasions advance the money or give your personal check for the payment of these lands and afterwards be reimbursed by the Wright-Blodgett Company?

(Objected to as irrelevant.)

A. I generally had authority from Mr. Kelly to make draft on him through the bank to pay for the few purchases I made for him. I may have, on some few occasions, put up the money myself and afterwards Mr. Kelly would reimburse me.

23. Mr. Wingate, did you ever purchase for your own use and benefit the property described in this deed from Stallsby to Wright-Blodgett Co.?

A. I did not.

24. Did you know Nat Wasey?

A. I did.

25. Did you ever have any conversation with him in regard to the business of the Wright-Blodgett Co.?

(Objected to as hearsay.)

A. I have.

26. Do you know that he was employed by the Wright-Blodgett Company?

(Objected to as leading.)

A. Yes, sir; he was their agent.

27. How do you know that?

A. Well, from transactions that I would assist him to make, deeds that I would prepare for him and transactions, sales, etc., I would see him make; that is, purchases of property; I supposed by that he was their agent. I would see him buy land and pay for it.

28. That land was for whom?

A. For the Wright-Blodgett Co.

29. You stated that Mr. Dickens was employed as agent

for the Wright-Blodgett Co. On what knowledge do you base that statement?

A. Mr. Dickens was employed at one time by the Wright-Blodgett Co.

30. How do you know that?

A. From correspondence and conversations had with him and business transactions with him. Mr. Dickens was Mr. Kelly's, I would term it, private secretary. He was  
182 stationed at Lake Charles, in the office, kept his books, made his maps, looked after his correspondence. If Mr. Dickens cruised timber or went into the woods and purchased and purchased land I know absolutely nothing about it.

31. In the absence of Kelly who was in charge, in authority, in Lake Charles for W. B. Co. during the time Mr. Dickens was employed by them?

A. Mr. Dickens; Pugo & Moss was their counsel. Mr. Dickens would confer with them.

32. Is there any way you can fix the time of employment of Mr. Dickens?

A. No way at all, unless I can see some old papers.

33. Do you know who succeeded him in the office of Wright-Blodgett Co.?

A. I would not be positive, but I think Foster did; Ben Foster, I believe. I am pretty sure that he succeeded Dickens.

34. For how long a time prior to the employment of Foster do you know that Dickens was employed in the office of Wright-Blodgett Co.?

A. I can't say; I don't know. I really don't know whether one year, six months, two years, eighteen months; I couldn't say with any reasonable degree of certainty.

35. Do you know of anyone occupying Mr. Dickens's position prior to his employment?

A. I cannot remember of anyone.

36. Then Mr. Dickens is the earliest office man for Wright-Blodgett Co. you can remember?

A. To my knowledge he was.

37. Can you state in what year it was you first did work for Wright-Blodgett Co. and kept in touch with their office at Lake Charles?

A. To the best of my recollection it was about 1901, or 1900; maybe a little before, or a little after. I cannot possibly remember these little details.

38. In cases where you purchased land upon a mere receiver's receipt for the Wright-Blodgett Co. had you any instructions from them of any kind as to whether you should make any investigation to find out if the law had been complied with by the entryman?

A. No, sir; Mr. Kelly would require me to send him a description of the land and the man's name.

39. Was that all he would require?

A. He would be the judge of the title and the quantity of timber on the land and if the title was not good he would say it was no good and the transaction would be closed up, and if the timber was no good on the land he would state that the timber was not such timber land as he required or cared to buy. He never gave me any instructions as to titles. He was judge of the title and the timber.

40. Did Mr. Kelly ever come personally to Leesville?

A. Yes, sir.

41. Often?

A. Yes, sir.

42. Would Mr. Dickens ever come personally to  
183 Leesville?

A. Yes, quite frequently.

43. Have you any knowledge of the scope of the employment of Nat Wazey by the Wright-Blodgett Co.; his duties and authority?

(Objection made to any testimony this witness may give not derived from any personal knowledge but from hearsay.)

A. Mr. Wasey was employed to look after the land of the Wright-Blodgett Co., as I understand it; to purchase timber, to prevent trespass on their lands.

44. Where was he located?

A. Located the majority of the time in the neighborhood of Sigler or Slabtown.

45. You think he was their field man?

(Objected to as leading.)

A. Yes, sir; I think so.

(Stenographer's note: At this point Mr. Mills instructed me



to insert all of Mr. Wingate's testimony in each of the several cases.)

Cross-Examination.

Monroe:

1. You never knew or heard of Jim Boyd being in the employ of Wright-Blodgett Co. until after Nat Wasey went crazy in 1904, did you?

A. No, sir. That was the first I knew of his employment. If he was employed before that time I have no knowledge of it.

2. In this Stallsby transaction, relative to which you were examined, will you look at two letter, both dated March 24, 1901, which I hand you and ask if you recognize them?

A. I wrote this letter on March 24, 1901, which is signed by me.

3. Did you make the pencilled memoranda on the letter signed by Stallsby?

A. I did.

4. Since reading those letter is your memory refreshed at all in regard to that transaction?

A. Yes, sir; I remember that sale was made.

5. In that transactions, I take it, you were acting in the capacity of a land broker?

A. That was all; I got 25 cents an acre commission. I brought the seller and purchaser together.

6. They knew nothing of each other prior to that time?

A. Yes, sir.

7. It was your service in making them acquainted with each other that you received 25 cents an acre?

A. Yes, sir.

184 (These letters filed and marked "W-B Co. Hester 1" and W-B Co. Hester 2.")

8. You say at the time this sale was made you knew nothing about the Hester claim being a homestead case at all?

9. And that impression was conveyed to the Wright-Blodgett Company?

A. The letter shows what I conveyed to them.

10. Mr. Wingate, had you any personal knowledge other than what you heard from people as to what the employment of Mr. Wasey was by the Wright-Blodgett Co.?

A. Well, I will answer that of course I was bound to know he was Wright-Blodgett's agent, because I had business with them, and he had business with them.

11. You knew he had business with them to a certain extent; but do you know his authority?

A. That I know nothing about; he might have been without certain powers that I thought he had.

12. That same condition would be applicable to Mr. Dickens, would it not? You don't know of your own knowledge what his authority and power was?

A. I don't know the extent of his powers; I knew he transacted business for them, but I don't know the extent of his authority.

13. And I take it that the business Wazey did that you knew positively about was in connection with the closing up of deals for the purchase of land—that is to say, when the actual deed was being signed?

A. Yes, sir; I saw money paid over by him.

14. You knew that it was the custom of Wright-Blodgett Co., as Mr. Moss of Pugo & Moss testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; they were Mr. Kelly's instructions. He told me, that at any time he should happen to be away that if I had an abstract made and sent to Pugo & Moss and if Pugo & Moss passed on the abstract the draft would be paid. Pugo & Moss passed on all their abstracts.

15. They didn't purchase any land until Pugo & Moss approved the title?

A. That was my understanding.

16. You know also that Dickens defaulted and left the country suddenly while in the employ of Wright-Blodgett Co.?

(Objected on the ground of irrelevancy.)

A. I don't know; I have heard that.

17. You know that they hunted for him without being able to find him?

(Objected to the ground of irrelevancy.)

A. I have heard he was hunted for; I don't know that he was.

18. Didn't persons from Wright-Blodgett Co. ask  
185 if you knew where he was?

A. Mr. Kelly told me he was trying to find him, but had not been able to locate him.

19. He never has been able to locate him?

A. Not to my knowledge.

20. Mr. Foster stated while on the stand that when he left the employ of Wright-Blodgett Co. he was succeeded by Mr. Livingstone. Is that correct?

A. I never had any business with Livingstone. I have heard of Livingstone being with Wright-Blodgett Co., but I don't know anything about him.

21. What I want to find out is whether Livingstone was employed before or after Foster.

A. He was employed after. I don't now [know] nothing about the employment.

22. You know, Mr. Wingate, as a timber man, do you not, that it is a custom with all large timber concerns to have an estimate of a great tract of land made by timber cruisers, as J. D. Lacy & Co., and after having an estimate made they buy on the strength of that estimate, relying on that estimate as to the statement of the amount of timber on that land?

(Objected to on the ground of irrelevancy and for the reason that the custom of other companies and the transactions of their business has nothing to do with this case.)

A. The Wright-Blodgett Co. had their own cruise. It was my understanding and my observation that the majority of large timber holders that move into a territory for the purpose of acquiring land generally have their own employes to cruise the timber and it is customary for them to cruise all the timber in the community lying contiguous and that they use this information from time to time on a basis of value.

23. They come in and cruise all the timber in that locality?

A. Yes, sir; it saves money and time.

24. All cruises are done at the same time when they come into the country?

A. Yes, sir.

#### Re-Examination.

Mills:

1. You state that you did not know that the Stallsby case

was based on homestead entry on which receiver's receipt alone had been issued?

A. I got the impression some way that that was some old claim.

2. You would not pass upon titles in these cases?

A. No, sir.

3. You state that before making purchase the Wright-Blodgett Company required an abstract and submitted it to their attorneys?

A. Yes, sir; in all the deals I closed up for Mr. Kelly it was his instructions that I make abstract of title, or cause the same to be done; that I make draft on him through the First National Bank of Lake Charles, or the Calcasieu National Bank, and send the abstract of title to Pugo & Moss; that if Pugo & Moss found the title to be correct they would authorize the bank to honor the draft.

4. Every abstract was made in this case and examined in a case in which the title was based on a receiver's receipt the abstract would show that?

A. Yes, sir.

5. Then, if the company pursued in this case the custom which you have outlined they would know full well before they made this purchase that this title was based on a receiver's certificate?

A. The abstract would show the receiver's certificate.

6. Mr. Monroe has asked you about the disappearance and the default of Dickens and whether or not Kelly came and made inquiries about it. Who do you consider the best witness as to those facts?

A. Mr. Kelly is the best witness.

#### Recross-Examination.

Monroe:

1. Don't you remember that Mr. Kelly was not in this country, that he was out on the Pacific coast at the time of Dickens' default, and it was only a great deal later that he came down and inquired about him?

A. Yes, sir; I heard Kelly was absent at the time.

2. Then Kelly would have no personal knowledge about it?

A. No, sir.

3. Did Pugo & Moss wire you about Dickens at the time?

A. I believe they did. The [they] notified me that he had skipped out and was no longer authorized to attend to their business.

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187 E. Z. BOYD, witness in behalf of complainant,  
being duly sworn, testified as follows:

Mills:

1. Where do you live?

A. Cora.

2. In what parish?

A. Vernon.

3. How long have you lived there?

A. About 20 years.

4. Who do you live with there?

A. I have a place of my own.

5. How long have you lived on this place of your own?

About eight years.

6. With whom did you live before you went to your own place?

A. My father.

7. At what place?

A. Cora; near Cora.

8. How long did you live with him?

A. Until I went to my place; that was my home part of the time.

9. Did you ever make a homestead entry in that vicinity?

A. Yes, sir.

10. Do you remember the description of the land you entered?

A. I don't know that I can give the numbers; Section 14.

11. Do you remember when you made this entry?

A. I don't know exactly the date.

12. About when?

A. About the year 1900, I believe.

13. Early in 1900?

A. Yes, sir; to the best of my recollection?

14. How far was that land on which you made your entry from your father's home?

A. About three miles.

15. After making this entry did you put any improvements on the land?

A. Yes, sir.

16. Of what did those improvements consist?

A. Dwelling house, front porch and side gallery.

188 17. How much did it cost you?

A. I couldn't tell you. I cut the lumber myself and hauled it and built it with two other men.

18. About what did it cost you?

A. Somewhere about \$20 or \$25.

19. Did you put up any other buildings?

A. No, sir.

20. During the life of your entry did you clear and cultivate any land?

A. I did.

21. How much?

A. Something over one acre fenced. I cultivated that acre.

22. What did you plant on that acre?

A. Peas and sweet potatoes. Raised a crop of peas and planted sweet potatoes.

23. Did you ever gather any sweet potatoes?

A. I did not. I cultivated some peas and harvested them. The potatoes I turned hogs in on them.

24. Did you ever commute your entry?

A. I did.

25. How long after you made your entry?

A. I could not tell exactly; my papers showed about 14 months.

26. Between the time you made your entry and the time your [you] commuted it how often did you visit this land?

A. I could not say how often. Frequently. Once every 3 months anyway.

27. You are prepared to swear under oath that you visited this land once every 3 months?

A. Me and my witnesses.

28. How long did you stay on these visits?

A. I made a practice of staying about three days.

29. Do you keep any furniture in this place?

A. Kept a place for sleeping purposes.

30. What do you mean by a "place"?

A. Cots. A place for rest.

189 31. Did you keep them there or take them with you?

A. Sometimes I left them there; while I was at work on

the crop I would leave our cots there. But after the crop season was over we might have taken them home.

32. Any other furniture there; bureau or stoves?

A. Nothing but plow tools, harness, etc., to cultivate the land.

33. Where was your actual residence during this time?

A. I was living at my father's.

34. This was about 3 miles from your homestead entry?

A. Yes, sir.

35. When you would go out on these quarterly trips to visit your entry would you spend the 2 days you stayed there in cultivating and working on the place, or some other way?

A. I spent what time it would take to cultivate the stuff that it needed.

36. What else did you do?

A. Hunted, and passed off the time the best way we could. That was our place of staying for the three days there.

37. What did you do most; hunt or cultivate?

A. I suppose that most of it was really hunting.

38. Isn't it a fact that you took advantage of these trips simply to go out and have a good time with your friends?

A. No, sir; my intention was to prove up the homestead according to law.

39. You were, then, combining business with pleasure in doing the hunting?

A. Not particularly. It was the business called me there. I spent the rest of the time I was not engaged otherwise in hunting.

40. Did you ever part with whatever title you had in that land?

A. Yes, sir.

41. To whom?

A. I sold to Nat Wazey; he was supposed to be representing Wright-Blodgett Company.

42. To whom did you sell the land—Wright-Blodgett Co. or Nat Wazey?

A. Sold to Wazey, I suppose.

43. Who acted as agent for the Wright-Blodgett Co.?

A. Mr. Wazey.

44. How far did he live from your place?

190 A. About 12 mile.

45. Did he know you pretty well?

A. Just a short while.

46. Was he ever on this land you entered before you sold it to the Wright-Blodgett Co.?

A. I cannot say that he was. I never saw him.

47. Had he been in that vicinity?

A. He had been in that section; I couldn't say he had been on the land.

48. When he purchased this land from you did he make inquiry as to whether you had complied with the homestead laws?

A. He did not.

49. How long after you made your commutation that you sold the land to Wright-Blodgett Co.?

A. I could not be positive as to how long; just a short period though.

50. Examine this copy of deed already filed in the case and state whether or not, to the best of your recollection, it is a correct copy of the deed passed in this case.

A. I suppose it is. I see my signature.

51. I see that Jas. M. Boyd is a witness on this deed? Did he have anything to do with the sale of this land to Wright-Blodgett Company?

A. He did not.

52. Do you know whether or not he was working for Wright-Blodgett Co. at that time?

A. I couldn't tell you.

#### Cross-Examination.

Monroe:

1. At the time you made your entry you intended in good faith to go on this land and make it your residence and make a homestead?

A. I certainly did.

2. You thought all the time you were complying fully with the law?

A. I certainly did, and a little more than was necessary.

3. You went there and tended regularly to the crop while it was growing?

A. I certainly did.

4. You did everything necessary to bring that crop to maturity?

A. I did, and furthermore I planted an orchard.



A. After I had proved it up.

12. When did Nat Wazey first speak to you about purchasing this land?

A. I could not say positively.

12. How long before you made the sale to him?

A. I couldn't say.

14. Approximate it.

A. About a month after I had commuted it. I couldn't be positive.

15. Now, Mr. Boyd, you understand you are under oath and are responsible for what you say. I want to ask you whether or not it is true that Mr. Wazey, or some other agent of the Wright-Blodgett Co. approached you in regard to the sale of this land before you commuted it?

A. He did not; not to my knowledge.

16. He may have without your remembering it?

A. I don't think he did.

#### Recross-Examination.

Monroe:

1. As a matter of fact, you did acquire another homestead some little time after your [you] gave up this one, did you not?

A. Certainly.

2. You have a home of your own now and are living on it and you acquired it some little time after giving up the first one, and it is a separate home from your father's home, is it not?

A. It is.

3. Perhaps you used some of the money gained by the selling of your first homestead to buy the second one?

A. I used the same money to commute it with.

194 Counsel for Wright-Blodgett Company offers patents from the U. S. government to Mr. E. Z. Boyd, marked "Boyd 1"; the abstract and opinion of Pugo & Moss, marked "Boyd 2," the right being reserved to withdraw this abstract and opinion for filing in the Walter O. Allen and J. J. Hicks cases; and the testimony of Mr. C. D. Moss.

(Filing and admission of abstract and opinion above mentioned objected to by the government for the same reasons stated at the time of taking the testimony of Mr. C. D. Moss.)

Case closed by plaintiff and defendant.

195 Counsel for government offers in evidence certified copies of the records of the general land office of the Department of the Interior showing all papers filed and receipts issued in the matters of the homestead entry of E. Z. Boyd on the south half of southwest quarter, Sec. 14, T. 2 N., R. 5 W., La. meridian, filed and marked Exhibit "B.")

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(To Be Inserted at End of Each Case).

196 Agreement.

It is agreed by the counsel for the government and counsel for defendant that all testimony shall be taken at the present sitting except as otherwise agreed upon; that the cases shall be argued and submitted at the May term of Court in Lake Charles, and that thereafter the Court may render judgment either in vacation term time as best suits its convenience, it being understood that in cases of appeals either side will accept service.

It is admitted that both the government and the defendants in these cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him.

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197

May 27th, 1912.

DEMAND THAT OTHER DEFENDANT JOIN APPELLANTS IN APPEAL.

Filed June 10, 1912.

LEROY B. GULOTTA,

Clerk, U. S. Dist. Court, West. Dist. of  
Louisiana.

E. Z. Boyd, Esq.,

Dear Sir:

The undersigned counsel for the Wright-Blodgett Company, Ltd., hereby demand that you shall join them in a petition of

appeal, which they propose making to the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, in the case of United States vs. E. Z. Boyd, and the Wright-Blodgett Co., Ltd., No. 364 of the docket of said Court, seeking an appeal to the United States Circuit Court of Appeal from a decree entered by said Circuit Court in said cause on the 6th day of May, 1912.

This petition will be presented in said Court at Shreveport, Louisiana, on the 10 day of June, 1912, at eleven o'clock, and if you fail to assent to this request at that time, such failure to assent to this request will be considered as a refusal to join in said bill.

HALL, MONROE & LEMANN,  
MITCHELL & YOUNG,

Attorneys Wright-Blodgett Company, Ltd.

Exhibit "A."

Date June 8th, 1912.

I, the undersigned, do hereby certify that I am personally acquainted with E. Z. Boyd, and that I served the original letter of which the above is a copy on the said E. Z. Boyd, by handing it to him personally, and received from him personally the attached reply, which he signed in my presence.

FERN M. WOOD.

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198 REFUSAL OF DEFENDANT TO JOIN IN  
APPEAL.

Filed June 10th, 1912.

LEROY B. GULOTTA,

Clerk, U. S. District Court, West. Dist. of  
Louisiana.

N. O., July 8, 1912.

Messrs. Hall, Monroe & Lemann,  
and Mitchell & Young, Attorneys,  
Wright-Blodgett Co., Ltd., City.

Gentlemen:

I acknowledge receipt of your letter of May 25th, demanding that I join with the Wright-Blodgett Company, Ltd., in a

petition of appeal, which they propose to make to the United States Circuit Court for the Fifth Circuit, and Western District of Louisiana, in the case of the United States of America, Complainants, vs. E. Z. Boyd, and the Wright-Blodgett Company, Ltd., Defendants, No. 364 of the docket of said Court.

I do now decline in said appeal.

Yours truly,

Exhibit "B"

E. Z. BOYD.

199 In the District Court of the United States for the Western District of Louisiana, Fifth Circuit of the United States.

United States of America

vs.

No. 364. In Equity.

E. Z. Boyd and The Wright Blodgett Company, Ltd.

To the Honorable the Judges of the Said Court :

The petition of the Wright-Blodgett Company, Ltd., defendant in the above entitled and numbered cause, with respect represents:

That they conceive themselves aggrieved by the decree entered in this cause on the sixth day of May, 1912, and that they desire to and hereby appeal the said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and present here with and make part of this petition, as "Exhibit A" hereto, assignments of error in said decree.

That as appears by the demand and notice annexed to and made part of this petition, as "Exhibit B" hereto, E. Z. Boyd, one of the defendants to the said bill has declined to join your petitioner in said appeal, as appears by his letter hereto annexed, marked "Exhibit C."

That by reason of the premises, your petitioners are entitled to a severance of this appeal from the said E. Z. Boyd.

Wherefore, the premises considered, petitioners pray that their appeal may be allowed to operate as a supersedeas, upon the giving bond with surety, in an amount to be fixed by the Court and conditioned according to law and that a transcript of the whole record, proceedings, testimony and papers upon which said decrees were made, duly authenticated, be sent to

the United States Circuit Court of Appeal for the Fifth Circuit, in the manner and form and at the time prescribed by law and by the practice of this Court.

That citation issue to the United States of America and the said E. Z. Boyd, and all other necessary parties, in the manner and form prescribed by law, and that your petitioners have such further relief as may be necessary in the premises.

HALL, MONROE & LEMANN,  
Attorneys for Petitioner.

Order.

Upon the filing and reading of the foregoing petition, it is ordered that the appeal and supersedeas and citation and severance and relief service above prayed for, be allowed upon petitioner's giving bond, according to law, with good and sufficient surety in the sum of two thousand dollars, to be approved, by the Clerk of this Court.

This appeal to be returnable into said Court, or according to law.

ALECK BOARMAN,  
Judge.

In open Court at Shreveport, La., June 10th, 1912.

Indorsed: No. 364. In Equity. United States District Court for Western District of Louisiana: United States vs. E. Z. Boyd and Wright-Blodgett Co., Ltd. Petition and order granting appeal. Filed June 10, 1912. Leroy B. Gulotta, Clerk. U. S. District Court for Western District of Louisiana.

Indorsed: Citation and service of same and further notice of said appeal waived. E. H. Randolph, U. S. Attorney.

ASSIGNMENT OF ERROR ON BEHALF OF THE  
WRIGHT-BLODGETT COMPANY, LIMITED,  
APPELLANTS.

201 In the District Court of the United States for the  
Western District of Louisiana, Fifth Circuit of  
the United States.

United States of America

vs.

No. 364. In equity

E. Z. Boyd and the Wright-Blodgett Co., Ltd.

Now comes the Wright-Blodgett Company, Ltd., and assigns the following errors committed by the Court to its prejudice in the decrees and orders herein appealed from, and prays that said decrees and orders may be reversed and set aside:

1. The Court erred in declaring the patent issued to E. Z. Boyd on February 15th, 1902, to the land described in the petition null and void, and ordering this appellant to surrender, deliver and return the same, restraining and enjoining the appellant from ever claiming or asserting any right, benefit, privilege, or advantage whatsoever under the said patent.

202 2. The Court erred in finding that in purchasing land for value from the holder of a final receipt or certificate, this appellant was bound to hunt for grounds of doubt and make a searching inquiry as to the validity of his vendor's claims to the property.

3. The Court erred in failing to find that it was incumbent upon the plaintiff to prove:

1. That there was fraud in the original entryman.
2. That the Wright-Blodgett Company, Ltd., had actual notice thereof at the time that it purchased property.

4. The Court erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

"So far as any inference was to be drawn from the nearness

of the respective dates of the receiver's receipts, the deeds of the entryman to C and the deeds of C to C1, it was as open to the officers of the Government as to C1, if indeed he knew anything about those dates, yet, they seem to have suspected nothing, and he was advised by reputable counsel that the titles were good and bought only on his advice."

5. The Court erred in failing to find that the Wright-Blodgett Company, Ltd., was a purchaser in good faith, for value, and without actual or other notice of the fraud, if any, in the original entryman.

6. The Court erred in failing to find that the Wright-Blodgett Company, Ltd., being a purchaser for value in good faith without actual notice, was entitled to hold the land under its patent regardless of the fraud, *vel non*, in the original entrymen.

203 7. The Court erred in finding that complainant has proven in this record that there was any fraud in violation of the law in the original entryman.

8. The Court erred in failing to find that the entryman left on the land a dwelling house with a front and side porch, with sleeping cots, etc., with something over one acre cleared and fenced, an orchard planted and a crop raised; that he and his two witnesses swore that they had complied with the law, and that if they did not do so, there was nothing in the physical conditions to indicate non-compliance with the law.

9. The Court erred in failing to dismiss the bill.

Wherefore, appellant prays that these assignments of error may be maintained, and that the decrees complained of be reversed, annulled and set aside or amended with costs.

HALL, MONROE & LEMANN.

Indorsed: No. 364. In Equity. U. S. Dist. Court, West. Dist. of La. United States vs. E. Z. Boyd and Wright-Blodgett Co., Ltd. Assignment of error. Filed June 10, 1912. Leroy B. Gulotta, Clerk U. S. Dist. Court West. Dist. of La.

## APPEAL BOND.

204 United States District Court, Western District of  
Louisiana.

The United States of America,  
versus No. 364. In equity  
Elijah Z. Boyd and the Wright-Blodgett Co., Ltd.

Know All Men By These Presents: That we, the Wright-Blodgett Company, Limited, of Saginaw, Michigan, as principals, and the United States Fidelity and Guarantee Company of Baltimore, Maryland, as surety, are held and firmly bound unto the United States of America in the full and just sum of two thousand (\$2,000.00) dollars, to be paid to the United States of America, or to any person or persons authorized to receive same, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Scaled with our seals and dated this the —— day of June, in the year of our Lord, one thousand nine hundred and twelve.

Whereas, lately at a session of the District Court of the United States for the Western District of Louisiana, in a suit pending in said court between said United States of America and Elijah E. Boyd, and the Wright-Blodgett Company, Limited, a decree was entered against the said defendant, Elijah Z. Boyd, and the Wright-Blodgett Company, Limited; the said Wright-Blodgett Company, Limited, having obtained from the said Court an order allowing an appeal and supersedeas to the United States Circuit Court of Appeals, to reverse the decree of the aforesaid suit, and a citation directed to the said United States of America to be issued, citing and admonishing the said United States of America to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana.

Now, the conditions of the above obligation is such, that if the said Wright-Blodgett Company, Limited, shall prosecute therein said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make



their plea good, then the above obligation is to be void, otherwise to remain in full force and virtue.

THE WRIGHT-BLODGETT CO. LTD.

[Seal] By WATTS K. LEVERICH, Atty.

THE UNITED STATES FIDELITY & GUARANTY CO.,  
By WM. M. FORD, Atty. in Fact.

Approved June 10th, 1912.

LEROY B. GULOTTA,  
Clerk U. S. District Court,  
Western District of Louisiana.

Indorsed: No. 364. United States District Court, Western District of Louisiana. The United States of America vs. Elijah Z. Boyd and the Wright-Blodgett Co., Ltd. Appeal Bond. \$2,000.00. The United States Fidelity & Guaranty Co., of Maryland, surety. Filed June 10, 1912. Leroy B. Gulotta Clerk, U. S. District Court, West. Dist. of Louisiana.

## CLERK'S CERTIFICATE.

United States of America.

United States District Court for the Western District of  
Louisiana.

Clerk's Office:

I, LEROY B. GULOTTA, Clerk of the United States District Court, for the Western District of Louisiana.

Do hereby certify, that the foregoing 205 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had and evidence adduced in the cause entitled United States of America versus E. Z. Boyd and The Wright-Blodgett Company, Limited, No. 364. In equity of the docket of the United States District Court, formerly United States Circuit Court, for the Western District of Louisiana, said transcript being made in accordance with the praecipe filed by Messrs. Hall, Monroe & Lemann, solicitors for appellant.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 6th day of July, A. D. 1912.

LEROY B. GULOTTA,

[Seal]

Clerk United States District Court for  
the Western District of Louisiana.

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That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz.:

ARGUMENT AND SUBMISSION.

Extract from the Minutes of January 23d, 1913.

Wright-Blodgett Company, Limited,

versus

No. 2407.

The United States of America.

On this day this cause was called, and, after argument by J. Blanc Monroe, Esq., for appellants, and E. H. Randolph, Esq., United States Attorney, for appellee, was submitted to the Court.

OPINION OF THE COURT.

Filed February 18th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

|                               |           |
|-------------------------------|-----------|
| Wright, Blodgett & Co., Ltd., |           |
| vs.                           | No. 2407. |
| The United States.            |           |
| Boyd's Case.                  |           |

|                               |           |
|-------------------------------|-----------|
| Wright, Blodgett & Co., Ltd., |           |
| vs.                           | No. 2408. |
| The United States.            |           |
| Aiken's Case.                 |           |

|                               |           |
|-------------------------------|-----------|
| Wright, Blodgett & Co., Ltd., |           |
| vs.                           | No. 2409. |
| The United States.            |           |
| Bryers' Case.                 |           |

|                               |           |
|-------------------------------|-----------|
| Wright, Blodgett & Co., Ltd., |           |
| vs.                           | No. 2410. |
| The United States.            |           |
| Hicks' Case.                  |           |

|                               |           |
|-------------------------------|-----------|
| Wright, Blodgett & Co., Ltd., |           |
| vs.                           | No. 2411. |
| The United States.            |           |
| Allen's Case.                 |           |

Appeals From the United States District Court for the  
Western District of Louisiana.

Before PARDEE, Circuit Judge, and NEWMAN and  
GRUBB, District Judges.

By the COURT.

The above entitled and numbered cases are separate appeals from separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that

Wright, Blodgett & Company, vendees of the alleged homesteaders, are charged through their active agents on the ground with knowledge of the fraud.

The decree in each of the above mentioned cases is Affirmed.

# JUDGMENT.

Extract From the Minutes of February 18, 1913.

Wright-Blodgett Company, Limited,

versus

No. 2407.

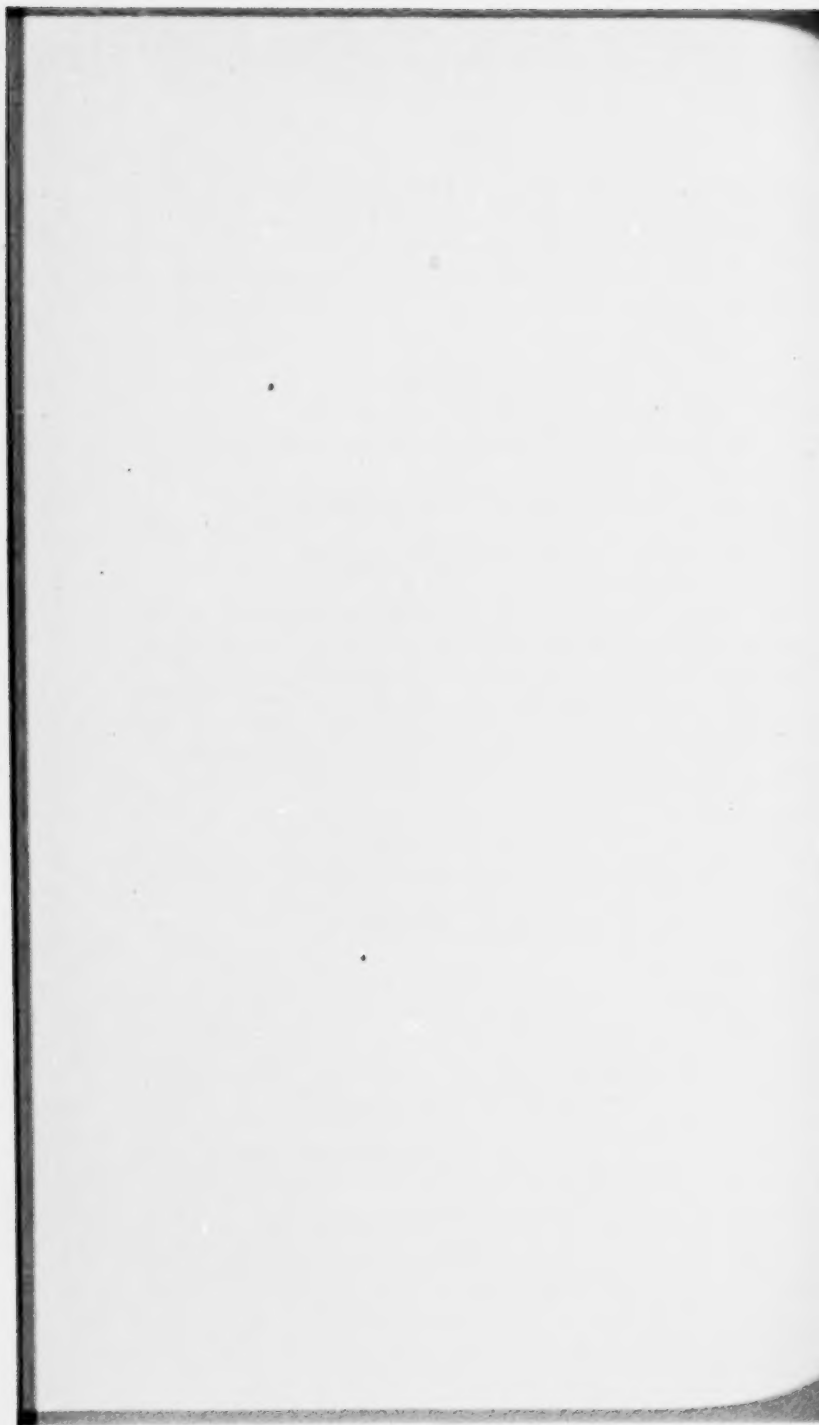
The United States of America.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed.

# PETITION FOR REHEARING.

Filed March 8th, 1913.



# United States Circuit Court of Appeals

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No. 2407.

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**WRIGHT-BLODGETT COMPANY, LIMITED,**  
(Boyd Case)

**Appellant,**

**versus**

**UNITED STATES OF AMERICA,**  
**Appellee.**

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To the Honorable the Judges of the United States Circuit  
Court of Appeals, Fifth Circuit:

The petition of the **Wright-Blodgett Company, Limited**,  
appellee herein, with respect shows:

That a rehearing should be granted in this case, for  
this, to-wit:

## I.

The burden is on the complainant to prove actual  
notice of the fraud in the **Wright-Blodgett Company,**  
**Limited.** The allegation is that this knowledge was had  
through **Boyd and Wasey.** **Boyd** has been eliminated as



he was not in defendant's employ at the time. This leaves no one but Wasey.

No one has sworn that Wasey was ever on this land.

No one has sworn that Wasey knew of the entrymen's alleged fraud.

There was no reason why he should be on the land or know of the fraud since Wright-Blodgett Company, Limited, bought on a cruiser's estimate which they had, and had an attorney's opinion on the title.

Why then should it be held that Wright-Blodgett Company, Limited, had such knowledge, particularly so when the law governing is as follows:

**Maxwell Land Grant case, 121 U. S. 325:**

“ ‘We take the general doctrine to be that when in a Court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, **THE TESTIMONY ON WHICH THIS IS DONE MUST BE CLEAR, UNEQUIVOCAL AND CONVINCING, AND THAT IT CANNOT BE DONE UPON A BARE PREPONDERANCE OF EVIDENCE WHICH LEAVES THE ISSUE IN DOUBT.** If the proposition, as thus laid down in the cases cited is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, de-

mand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof.'

"The doctrine of that decision has been reaffirmed in numerous subsequent cases. **United States v. Stinson**, 197 U. S. 200, 25 Sup. Ct. 426, 49 L. Ed., 724, and cases there cited."


## II.

The Government experts, trained to nose out fraud and informality, examined this record once before Wright-Blodgett Company, Limited, bought, and once after. **In each instance they found the law complied with.** They were deceived by appearances. Why should not the Wright-Blodgett Company, Limited, have been so deceived?

Wherefore petitioner prays for a rehearing herein and for general relief.

J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHELL,  
Solicitors.

I certify that in my opinion the foregoing application is well founded.

.....  
Solicitor.

New Orleans, March 8. 1913.



ORDER DENYING REHEARING.

Extract From the Minutes of March 18th, 1913.

|                                |           |
|--------------------------------|-----------|
| Wright-Blodgett Company, Ltd., |           |
| versus                         | No. 2407. |
| United States of America.      |           |

Ordered that the petition for rehearing filed in this cause, be, and the same is hereby denied.

PETITION FOR APPEAL AND ORDER.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

|                                   |            |
|-----------------------------------|------------|
| Wright-Blodgett Company, Limited, |            |
| (Boyd Case)                       | Appellant, |
| vs.                               | No. 2407.  |
| The United States of America,     |            |
|                                   | Appellee.  |

To the Honorable the Judges of the United States Circuit Court of Appeals, Fifth Circuit:

Now, comes the Wright-Blodgett Company, Limited, by its undersigned solicitors, and complains that in the record and proceedings, and also in the rendition of the decree of the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, in the above styled and numbered cause, on the 18 day of February, 1913, which decree was made final by rehearing being denied on the 18 day of March, 1913, and which decree affirmed the decree of the United States Circuit (now District) Court, for the Western District of Louisiana, in said cause, manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the Circuit Court of the United States for the Western District of Louisiana depended upon the fact that the suit was brought by the United States of America and arose under the Public Land Laws of the United States, the defendant, appellant, relying for its defense upon said laws

and the construction heretofore placed upon them by the Supreme Court of the United States; that the amount involved therein and the matter in controversy exceeds the sum of one thousand dollars (\$1000.00) besides costs, and that this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final.

Wherefore, petitioner prays for an allowance of the appeal, to the end that the cause may be carried to the Supreme Court of the United States. And petitioner prays for a supersedeas of said judgment, and such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

(Signed) J. BLANC MONROE.

(Signed) MONTE M. LEMANN.

Solicitors.

#### ORDER.

Appeal and supersedeas allowed and bond fixed in the sum of \$500, conditioned as the law directs.

This the 25th day of March, 1913.

(Signed) DON A. PARDEE, Judge.

Service accepted and citation waived.

March 24, 1913.

(Signed) E. H. RANDOLPH.

U. S. Atty.

## ASSIGNMENT OF ERRORS.

Filed March 25th, 1913.

United States Circuit Court of Appeals.

Wright-Blodgett Company, Limited,  
(Boyd Case) Appellant,  
vs. No. 2407.  
The United States of America,  
Appellee.

## ASSIGNMENT OF ERRORS.

The Wright-Blodgett Company, Limited, appellant, by its undersigned solicitor, in connection with its petition for appeal herein, presents this, its assignment of errors, and says:

That the decree made and entered on the 15th day of February, 1913, by the Circuit Court of Appeals of the United States, for the Fifth Circuit, in the case styled Wright-Blodgett Company, Limited, Appellant, vs. The United States of America, Appellee, No. 2407 of the docket of said Court, is erroneous, and against its just rights, in the following particulars, to-wit:

(1) The Circuit Court of Appeals erred in declaring the patent issued by the United States to E. Z. Boyd on February 15, 1902, to the land described in the bill of complaint, null and void, and in ordering this appellant to surrender, deliver and return same, and in restraining and enjoining this appellant from ever claiming or asserting any right, benefit, privilege, or advantage whatsoever under said patent.

(2) The Circuit Court of Appeals erred in finding that any fraud in the homestead entry had been proven by the complainant.

(3) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Company, Limited, were charged, through their active agents on the ground, with knowledge of fraud in the homestead entry.

(4) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated by this Court in the Maxwell Land Grant case, where the Court said:

"We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt."

(5) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

"So far as any inference was to be drawn from the nearness of the respective dates of the receivers' receipts, the deeds of the entryman to C and the deeds of C to C1, it was as open to the officers of the Government as to C1, if indeed he knew anything about those dates. Yet they seem to have suspected nothing and he was advised by reputable counsel that the titles were good and bought only on his advice."

(6) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Company, Limited, were charged with notice, through their active agents, on the ground. The bill designated Nat Wasey and J. M. Boyd as the persons through whom the Wright-Blodgett Co., Ltd., had received notice. The Wright-Blodgett Co., Ltd., consistently objected to the proof of notice in them through parties other than the said Wasey and Boyd, and under the pleadings and objection of no proof of notice through any other agents could or should have been received or recognized by the Court.

(7) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Co., Ltd., was charged with notice of facts known to Nat Wasey or J. M. Boyd, or any one else, until it was proven that such persons were the agents of the Wright-Blodgett Company, Ltd., and that such facts related to matters within the scope of their authority.

(8) The Circuit Court of Appeals erred in failing to find that the entryman and his witnesses swore that they had complied with the law and that the entryman left on the land a dwelling house, with a front and side porch, with sleeping cots, etc., a fenced clearing of something over one acre, a planted orchard and traces of a crop raised; and in failing to find that these mute and written evidences of compliance with the law were sufficient to deceive a vendee.

(9) The Circuit Court of Appeals erred in finding that the land officials of the United States were deceived by the entryman, and the evidences of compliance with the law left by the entryman upon the land, and in failing to find that the Wright-Blodgett Company, Ltd., which was confronted with the same statements and same evidences, were not similarly deceived.

(10) The Circuit Court of Appeals erred in failing to dismiss the bill.

Wherefore, appellant prays that the decree herein complained of may in these respects be reversed and corrected, and that appellant may have an adjudication and decree in its favor, in accordance with law and equity, as herein specified.

(Signed) J. BLANC MONROE,

(Signed) MONTE M. LEMANN,

(Signed) A. R. MITCHEL,

Solicitors for Appellant.

#### APPEAL BOND.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright Blodgett Company, Limited,

(Boyd Case)

vs.

The United States of America,

Appellant,

No. 2407.

Appellee.

Know All Men By These Presents: That we, the Wright-Blodgett Company, Limited, as principal, and the United



States Fidelity & Guaranty Company, of Maryland, as sureties, acknowledge ourselves to be jointly indebted unto the United States of America, and Elijah Z. Boyd, appellee, in the above cause, in the sum of five hundred 00/100 dollars, conditioned that whereas, on the 18 day of February, 1913, in the Circuit Court of Appeals of the United States, for the Fifth Circuit, in a suit depending in that Court, wherein the United States of America was plaintiff, appellee, and the Wright-Blodgett Company, Limited, was appellant, numbered on the docket of that Court as above, a decree was rendered against the said Wright-Blodgett Company, Limited, and the said Wright-Blodgett Co., Ltd., having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the Clerk of Court, to reverse the said decree, and a citation directed to the said United States of America and the said Elijah Z. Boyd, citing and admonishing each of them to be and appear at a session of the Supreme Court of the United States, to be holden in the City of Washington, in the District of Columbia, on the 24th day of April next.

Now, if the said Wright-Blodgett Company, Limited, shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) WRIGHT-BLODGETT CO., LTD.

(Signed) UNITED STATES FIDELITY &  
GUARANTY COMPANY.

By (Signed) WILLIAM H. KLINESMITH,  
Its Attorney in Fact.

Approved.

(Signed) DON A. PARDEE, Judge.

CLERK'S CERTIFICATE.

United States of America.

United States Circuit Court of Appeals, Fifth Circuit.

I, FRANK H. MORTIMER, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 184 to 195 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2407, wherein Wright-Blodgett Company, Limited, is appellant, and The United States of America is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 183 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this date, 14th day of April, A. D. 1913.

[Seal]

FRANK H. MORTIMER,  
Clerk of the United States Circuit Court of Appeals.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2407.

WRIGHT-BLODGETT COMPANY, LIMITED, Appellant,  
(Boyd Case)

vs.

THE UNITED STATES OF AMERICA, Appellee.

UNITED STATES OF AMERICA:

The President of the United States to Elijah Z. Boyd, Greeting:

You are hereby notified that in a certain case in equity in the United States Circuit Court of Appeals, in and for the Fifth Circuit, wherein the United States of America is Complainant, and the Wright-Blodgett Company, Limited and yourself are defendant, an appeal has been allowed the Wright-Blodgett Company, Limited, therein to the Supreme Court of the United States. You are hereby cited and admonished to be and appear in said Court at Washington, D. C., within thirty days after the date of this citation, to show cause if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 25th day of March, 1913.

DON A. PARDEE,

*Circuit Judge.*

STATE OF LOUISIANA,

*Parish of Vernon:*

On this, the 4th day of April, A. D., 1913, personally appeared before the undersigned authority, W. C. McElveen, who being duly sworn, deposes and says:

That he delivered a copy of the within citation to Elijah Z. Boyd on the 3rd day of April, 1913, at Merryville, Louisiana, by handing same to said person in person.

W. C. McELVEEN.

Sworn to before me this 4th day of April, 1913.

[Seal W. W. Thompson, Notary Public, Vernon Parish, La.]

W. W. THOMPSON,

*Notary Public, Vernon Parish, La.*

[Endorsed:] 2407. In the United States Circuit Court of Appeals, Fifth Circuit. Wright-Blodgett Company, Ltd., versus The United States of America. Citation of Appeal to Elijah Z. Boyd and Marshal's Return thereon. U. S. Circuit Court of Appeals. Filed Apr. 8, 1913. Frank H. Mortimer, clerk.

Endorsed on cover: File No. 23,651. U. S. Circuit Court Appeals, 5th Circuit. Term No. 1076. Wright-Blodgett Company, Limited, appellant, vs. The United States. Filed April 22nd, 1913. File No. 23,651.

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 155. 155

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WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

vs.

THE UNITED STATES.

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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FILED APRIL 22, 1913.

(23,652)



(23,652)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1077.

WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

*vs.*

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA.

United States Circuit Court of Appeals, Fifth Judicial Circuit.

PLEAS AND PROCEEDINGS had and done at a regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, before the Honorable Don A. Pardee, Circuit Judge, and the Honorable William T. Newman and the Honorable William I. Grubb, District Judges:

WRIGHT-BLODGETT COMPANY, LIMITED,

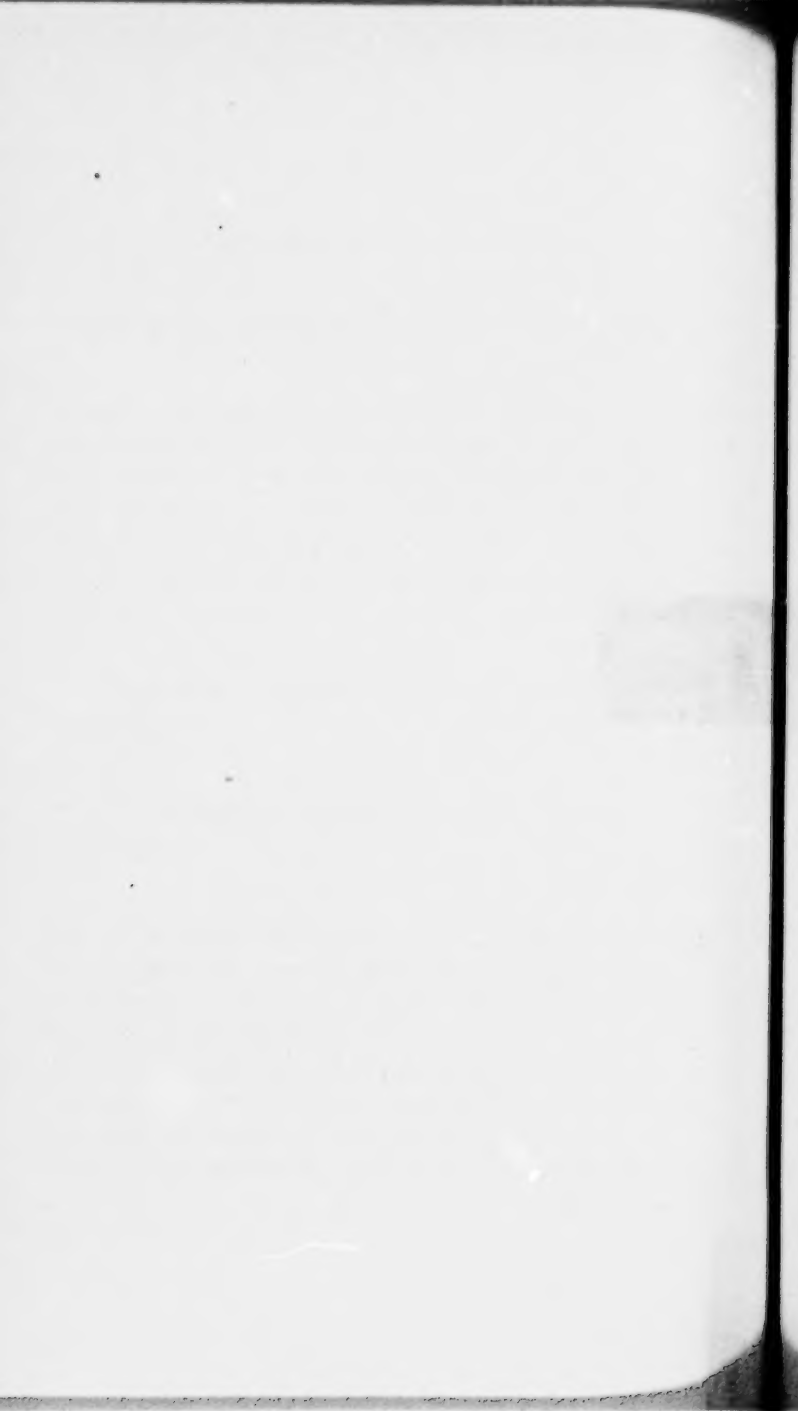
Appellant,

versus

THE UNITED STATES OF AMERICA,

Appellee.

BE IT REMEMBERED, That heretofore, to-wit, on the 3rd day of August, A. D. 1912, a Transcript of the Record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said Transcript was filed and docketed in said Circuit Court of Appeals as No. 2468, as follows:



UNITED STATES DISTRICT COURT, FOR THE WEST-  
ERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA

versus      No. 365.    In Equity.

SAMUEL S. AIKEN, JR., AND THE WRIGHT-BLOD-  
GETT COMPANY, LIMITED.

APPEALED FROM THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF LOU-  
ISIANA TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE FIFTH CIRCUIT.

TRANSCRIPT.

Hon. E. H. Randolph, United States Attorney, Hon. Lowell  
C. Butler, Asst. U. S. Attorney, Solicitors for Complain-  
ant, Appellee.

Messrs. Hall, Monroe & Lemann, Messrs. Mitchel & Young,  
Solicitors for The Wright-Blodgett Company, Limited,  
Defendant, Appellee.

4           IN THE CIRCUIT COURT OF THE UNITED  
             STATES FOR THE FIFTH CIRCUIT AND  
             WESTERN DISTRICT OF LOUISIANA.

THE UNITED STATES OF AMERICA, COMPLAINANT,

versus       No. 365. In Equity.

SAMUEL S. AKIN, JR., AND WRIGHT-BLODGETT  
             COMPANY, DEFENDANTS.

To the Honorable Judges of the Circuit Court of the United  
     States for the Fifth Circuit and Western District of Lou-  
     isiana, in Equity:

William H. Moody, Attorney General of the United States, for and in behalf of the United States of America, files this bill of complaint against Samuel S. Akin, Jr., a citizen of and residing within the Parish of Rapides, in the State of Louisiana, and of the Western District of Louisiana, and the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, with its domicile at Saginaw, Michigan, defendants herein, and thereupon, your orator complains and says:

First: That the said defendant, Samuel S. Akin, Jr., on the 4th day of May, 1899, under and by virtue of the provisions of Sections 2289 and 2290 of the Revised Statutes of the United States, filed in the local Land Office of the United States at Natchitoches, in the State of Louisiana, his application No. 7739, to enter the following described land, to wit: South half of northwest quarter, south half of northeast quarter, Section two, Township two north, Range five west, Louisiana Meridian, in the Parish of Vernon, Louisiana, containing one hundred and sixty-three and 42/100 acres.

Second. That at the time of filing by the said defendant, Samuel S. Akin, Jr., to enter the said aforementioned land and premises, and contemporaneously therewith, the said defendant likewise filed in the said local Land Office of the United States, as required by law, his affidavit and statement in writing under

oath, in which, among other matters and things, he stated and deposed that his said application to enter said lands as a homestead was honestly and in good faith made for the purpose of actual settlement and cultivation, and that he, said defendant, would faithfully and honestly endeavor to comply with all the

requirements of law as to settlement, residence and  
 5 cultivation necessary to acquire title to said lands so  
 applied for, and that he had not and did not apply to enter the said lands for the purpose of speculation, but in good faith to acquire a home for himself. That, thereupon, the said defendant then and there paid to the receiver of the said Land Office of the United States at Natchitoches, Louisiana, the sum of twenty-six and 55/100 dollars, fees and excess price of lands entered, the same being the proper and legal amount, then and there due and payable to said receiver, upon the filing of his said application by said defendant, and upon said payment having been made as aforesaid, a receipt was then and there issued and delivered by said receiver to said defendant for said amount so paid by him, as aforesaid, and attached to and connected with said receipt, a notation, setting forth in detail the requirements of the law to be observed and complied with by said defendant in order to obtain title to said lands so applied for to be entered by him, as follows, to-wit:

"Note—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the five years he must file proof of his actual residence and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain the five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to the time of payment."

Third. That, thereupon, in order to entitle the said defendant to obtain and procure from the said United States a patent for said tract of land, under the homestead laws of the United States, it was incumbent on said defendant and he was required to make actual settlement on said lands and reside

thereon and cultivate the same for a period of five years from and after the date of the filing of his said application and affidavit hereinbefore mentioned and referred to, or in case said defendant did not desire to remain upon said lands the full period of five years, to make payment for said lands at the expiration of fourteen months from and after the filing of his said application and affidavit, upon making proof before the register and receiver of said local land office at Natchitoches, Louisiana, of settlement upon and cultivation of said lands by said defendant from the date of the filing of said application and affidavit down to the time of making such payment. That for the purpose of availing himself of the privilege, afforded by the laws in such cases made and provided, to purchase the

lands after the expiration of fourteen months from  
 6 and after the filing by him of his said application  
 and affidavit on the 17th day of August, 1901, appeared before James M. Boyd, then and there a United States Commissioner, at Cora, in the Parish of Vernon, Louisiana, due notice having been given thereof as required by law, with his witnesses, Frank Mashon and Allen Carruth, and offered proof before James M. Boyd, as aforesaid, that he had settled upon the said lands and premises, and actually resided thereon and cultivated the same as required by and within the meaning of the said homestead laws of the United States, then and there gave, made out and signed his deposition, and swore to the same before the said James M. Boyd, as aforesaid, and soon thereafter, to-wit, on the 26th day of August, 1901, filed and caused to be filed the said deposition and sworn statement in the United States Land Office at Natchitoches, Louisiana, the said land office being then and there the proper United States Land Office of the land office wherein said lands are situated and then and there offered, presented, delivered and filed the said deposition and sworn statement, so made, signed and sworn to by him, the said Samuel S. Akin, Jr., defendant, to and with the register and receiver of the said United States Land Office, as proof of the settlement and residence upon, and the cultivation of the said lands and premises by the said defendant, as required by law, and the statutes in such cases made and provided, and the same was accepted by the said register and receiver of said land office.

Fourth. And your orator sheweth unto your Honors, that

the said defendant, Samuel S. Akin, Jr., in said deposition and sworn statement, made, signed and sworn to by him as aforesaid, and offered, presented, delivered to and filed with the register and receiver, and accepted by them as proof of the settlement and residence of said defendant upon said lands, and of the cultivation of the same by him, the said defendant, among other things testified and deposed that he established his actual residence upon said lands on the 4th day of May, 1899, and had resided on said lands continuously since said date, and had not been absent at all, and that he had resided continuously since said date, and that he had cleared about two acres of said land, and that he had cultivated the same for two seasons. That the said defendant procured from each of his said witnesses, Frank Mashon and Allen Carruth, a like deposition and sworn statement, taken before the said James M. Boyd, U. S. Commissioner, as aforesaid, on the 17th day of August, 1901, the same in effect as, and corroborative and in

aid of the said deposition and sworn statement, made,  
 7            signed and sworn to by him, the said defendant, and  
              filed the same with defendant's own deposition and  
 statement, in the local land office of the said United States at Natchitoches, Louisiana, as proof of the settlement and residence upon, and the cultivation of said lands by the said defendant, as required by law, and all of said depositions, testimony and sworn statements of the said defendant's and his said witnesses, so made, signed, signed and sworn to as aforesaid, were, and each of them was, then and there, taken and accepted by the said register and receiver of said land office as proof of the settlement and residence of said defendant upon, and the cultivation by him of said lands and premises. That, thereupon, on the 18th day of September, 1901, the said defendant paid to the receiver of the said United States Land Office at Natchitoches, Louisiana, the sum of four hundred dollars, being payment for said lands at the rate of two and 50/100 dollars per acre for said land, and thereupon the said receiver, then and there issued to said defendant his final receipt, No. 21278, for the said moneys so paid by the said defendant in payment for said lands, as aforesaid, and the register of the said land office, likewise, then and there, issued to said defendant his certificate, No. 21278, for said lands, certifying that in pursuance of law, the said defendant had purchased said lands and upon presentation of said certificate to the Commissioner



of the General Land Office, the said defendant, Samuel S. Akin, Jr., should be entitled to receive a patent for the said tract of land hereinbefore more particularly set forth and described. That thereafter such proceedings were had that on the 1st day of April, 1902, a patent was issued to said defendant, Samuel S. Akin, Jr., for said lands, which patent was duly delivered to said defendant and received by him.

Fifth. And your orator further sheweth unto your Honors that the said acceptance of the said depositions and testimony of the said defendant, Samuel S. Akin, Jr., and of his said witnesses, Frank Mashon and Allen Carruth, as proof of the settlement and residence of said defendant upon said lands and the cultivation of the same by him as required by law, by the said register and receiver, and the issuance of the said final receipt, and the issuance of said certificate of purchase by the said register, as hereinbefore mentioned and set forth, and the issuance of said patent for the said tract of land by the United States were done by the said officers of the said land office and the officers of your orator, the United States, in reliance, by them, and each of them, upon the truth of the testimony and statements contained in said depositions of the said  
 8 defendant, Samuel S. Akin, Jr., and in reliance by them, and each of them, upon the truth of the testimony and statements contained in the depositions of the said witnesses, Frank Mashon and Allen Carruth, and in reliance upon the good faith of the said defendant and his said witnesses, and not otherwise.

Sixth. That the said deposition of the said defendant, Samuel S. Akin, Jr., and the depositions of his said witnesses were, and each of them was, then and there, false and fraudulent, as was then and there well known to the said defendant, and each of his said witnesses, and made with the intent to deceive the officers of the United States, and with the intent to fraudulently obtain patent to the said lands hereinbefore described, and by fraud and deceit to procure a patent for the said lands, by means of false and fraudulent testimony and statements made and contained in said depositions and testimony in this, to wit: That the said defendant had not and did not establish his actual residence upon said lands, or any part or portion thereof on the 4th day of May, 1899, or at any time,

or at all, and that the said defendant had not, at the time of making his said proof, and filing the same in the said land office, resided on said land, or any part or portion thereof, continuously, or in any other manner, or at all, since the 4th day of May, 1899, or at any time, or at all, and that the said defendant had not then, or at any other time, cleared about two acres of said lands, or any other amount of said lands, and did not then, or at any other time, have about two acres of said lands, or any other amount of said lands in cultivation for two seasons. But your orator alleges the fact to be that the said defendant never did make a settlement upon said lands, or any part thereof, and never did establish his residence on said lands, or any part thereof, and never did cultivate any part or portion thereof; and each and every of the statements so made by the said defendant, and his said witnesses, as hereinbefore specially mentioned and set forth, which are contained in said depositions and testimony to prove settlement and residence by said defendant upon said lands, and the cultivation by him of the same, as required by the homestead laws of the United States, are utterly false and fraudulent and untrue in every particular, as he, the said defendant, Samuel S. Akin, Jr., then and there well knew.

Seventh. And your orator charges and alleges that the said testimony of the said defendant, Samuel S. Akin, Jr., as contained in his said deposition, and the testimony of his  
 9      said witnesses, Frank Mashon and Allen Carruth, as contained in said depositions made by them as aforesaid, was false, fraudulent and untrue in the respects and in the several particulars as hereinbefore set forth; and the same was made, offered and filed as proof of the settlement and residence of said defendant upon said lands, and the cultivation of the same as aforesaid, for the false and fraudulent purpose of imposing upon and deceiving the register and receiver of the United States Land Office at Natchitoches, Louisiana, and to cause and induce the said officers and agents of your orator to believe that the statements and testimony contained in said depositions were true, and that the said defendant, Samuel S. Akin, Jr., had in fact made and established a settlement and resided upon said tract of land, and had cultivated the same, as by law required, and for the purpose of obtaining and pro-

curing by means of fraud and deceit, the issuance to said defendant a patent for the lands hereinbefore described.

Eight. And your orator further sheweth unto your Honors, that the said defendant, Samuel S. Akin, Jr., by means of the said false and fraudulent depositions, and false and fraudulent statements and testimony contained therein, given under the sanction of an oath of the said defendant and his said witnesses, imposed upon and deceived the said officers and agents of the United States, and caused and induced the said officers to believe that the testimony and statements contained in said depositions were true, and that the said defendant had actually settled and resided upon said lands, and cultivated the same in the manner and to the extent as stated in the said depositions. And the said officers of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of said defendant and his said witnesses to be true; and relying upon the truth of said testimony and statements, so falsely and fraudulently given and made by the said defendant and his said witnesses, as aforesaid, and believing and supposing upon the strength of said depositions and testimony, that the said defendant had actually made settlement and established his residence upon said tract of land, and had cultivated the same, in the manner and to the extent and during the period of time as therein stated by the said defendant and his said witnesses, were wholly deceived and misled into allowing said proof to be filed and accepted, and in permitting the issuance of said final receipt, and the issuance of said certificate of purchase of said land, and the United States patent therefor by the said officers of the said United States as hereinbefore set forth, and delivering the said patent to the said defendant.

10 Ninth. And your orator further sheweth to your Honors, that the existence of the said patent, so fraudulently obtained and procured by the said defendant, Samuel S. Akin, Jr., as aforesaid, on its face, entitles the said defendant to exercise the right of absolute ownership of and over the said lands hereinbefore mentioned and described, and assert a title to the same, to which the said defendant is not entitled. That if the said patent remains uncanceled and in force, it can be used in fraud of your orator and all persons relying thereon, as a valid and subsisting conveyance of the

legal title to the said lands and premises above described, all of which acts and doings is contrary to equity and good conscience, and done to the manifest injury of your orator.

Tenth. And your orator further sheweth unto your Honors, that the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile and place of business in the City of Saginaw, in the State of Michigan, is now asserting title to the said lands, so falsely and fraudulently obtained and procured to be patented by the United States to the said defendant, Samuel S. Akin, Jr.; that the said company is asserting title to said lands by reason of an act of sale from the said defendant, Samuel S. Akin, Jr., to the said Wright-Blodgett Company, of date September 28, 1901, and recorded in the Clerk's Office of the Parish of Vernon, at Leesville, Louisiana. Your orator avers and charges that at the time of making said sale, or pretended sale, to the said Wright-Blodgett Company, aforesaid, the said defendant, Samuel S. Akin, Jr., had no title, either real or apparent, to the lands sought to be conveyed by said act of sale hereinbefore referred to; that said act of sale was made to the Wright-Blodgett Company, as aforesaid, more than six months before the issuance to him by the United States of the patent to said lands, and that, therefore, the said lands at the time of the said pretended sale, made as aforesaid, were not the lands of the said defendant, Samuel S. Akin, Jr., but were the lands of the United States. And your orator further sheweth unto your Honors, that the subsequent issuance of said patent for said lands to the defendant, Samuel S. Akin, Jr., could not and did not inure to the benefit of the said Wright-Blodgett Company by reason of said pretended act of sale, for

11 the reason that said patent was so obtained, as hereinbefore in this bill set forth, by the false and fraudulent methods therein described and charged. Your orator further charges and avers, that at the time of said pretended sale by the said defendant, Samuel S. Akin, Jr., to the said Wright-Blodgett Company, as aforesaid, and prior thereto, and up to and including the dates of making said false and fraudulent proof of residence and cultivation of said lands by the said defendant, Samuel S. Akin, Jr., and his said witnesses, and of the issuance of said patent, one Nat Wasey and one

James M. Boyd were the agents of the said Wright-Blodgett Company, and entrusted by said company in the investigation, solicitation and purchase of lands for their use and benefit, and that the said Wright-Blodgett Company, by and through its said agents, Nat. Wasey and James M. Boyd, was well advised of and knew each and every detail of the acts and things done and committed, as hereinbefore set forth and described, by the said defendant, Samuel S. Akin, Jr., and his said witnesses, for the unlawful and inequitable purpose of obtaining by such false and fraudulent methods the issuance of said patent; and your orator avers and charges that the said Wright-Blodgett Company, so well knowing and being advised of said false and fraudulent acts and doings on the part of the said defendant, Samuel S. Akin, Jr., and his said witnesses, did, through its officers, whose names are to your orator unknown, and, therefore, not herein given and set forth, aid, assist, advise and encourage the commission of each and every of said acts and things with the fraudulent purpose of obtaining title to the said lands hereinbefore described. For these reasons your orator avers that the said act of sale, as hereinbefore set forth, from the said defendant, Samuel S. Akin, Jr., to the said Wright-Blodgett Company, should be canceled, annulled, set aside and held for naught by the decree of your Honors contrary to equity and good conscience, and to the manifest injury of your orator. For as your orator can have no adequate relief except in this court, and to this end, therefore, that the defendants, and each of them, may, if he can, show why your orator should not have the relief hereby prayed, and make a full disclosure and discovery of the matters aforesaid, and according to the best of his knowledge, remembrance, information and belief, true, direct and perfect answer make, each of them, to the matters herein stated and charged, but not under oath, an answer under oath being hereby expressly waived.

And your orator further prays that a decree be rendered by this Court, declaring null and void the said patent  
 12 to the said defendant, Samuel S. Akin, Jr., for said lands and premises, and requiring, directing and compelling said defendant, Samuel S. Akin, Jr., to surrender, deliver up and return the said patent to your orator, and that he be forever and perpetually restrained and enjoined from setting up, asserting or claiming any right, privileges, benefits or

advantages under said patent; and your orator prays that the act of sale from said defendant, Samuel S. Akin, Jr., to the said Wright-Blodgett Company be declared null and void and of no effect, and that the said Wright-Blodgett Company be forever and perpetually restrained and enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said act of sale, and that defendants, and each of them, be held to pay into the treasury of your orator all such reasonable sums of money as it may be found necessary to lay out and expend in and about discovering the fraud, so as hereinbefore set forth and charged, and that your orator may have all such further relief in the premises as may be conformable to equity and good conscience, and as such seems proper to this Honorable Court.

May it please your Honors to grant unto your orator a writ of subpoena of the United States of America, issued out of and under the seal of this Court, directed to the said defendants, Samuel S. Akin, Jr., and the Wright-Blodgett Company, through its proper officer, and each of them, commanding them, and each of them, on a day certain to appear and answer to this bill of complaint, and to abide and perform such order and decree in the premises as the Court shall deem proper and required by the principles of equity and good conscience.

WILLIAM H. MOODY,

Attorney General of the United States.

MILTON C. ELSTNER,

United States Attorney, Western

District of Louisiana.

United States of America,

Western District of Louisiana.

Milton C. Elstner, being first duly sworn, deposes and says: That he is the regularly appointed, qualified and acting United States Attorney for the Western District of Louisiana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and facts therein stated and alleged are true to the best of his knowledge and belief.

M. C. ELSTNER.

Subscribed and sworn to before me this 8th day of Sept.  
A. D. 1906.

W. JACKSON,

[Seal] Clerk of the U. S. Circuit Court, 5th Circuit,  
Western District of Louisiana.

13 Indorsed: No. 365. United States vs. Samuel S.  
Akin, Jr., and Wright-Blodgett Company. Bill of  
complaint. Filed Sept. 8th, 1906. W. Jackson, Clerk.

14 United States of America.

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States to the Marshal for the  
Western District of Louisiana—Greeting:

You are hereby commanded to summon Samuel S. Akin, Jr., a citizen of and residing within the Parish of Rapides, State of Louisiana, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a circuit court to be holden at the City of Lake Charles, Louisiana, on the third Monday of December, 1906, then and there to answer a bill of chancery, filed against him, wherein the United States of America is complainant, and said Samuel S. Akin, Jr., and Wright-Blodgett Company are defendants.

Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 17th day of September, in the year of our Lord one thousand nine hundred and six, and the 130 year of American independence.

[Seal]

W. JACKSON, Clerk.

The defendant, Samuel S. Akin, Jr., is hereby notified that he is required to enter his appearance in the Clerk's Office of the United States Circuit Court, at Lake Charles, on or before the first Monday of November, 1906, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 365. The United States of America vs. Samuel S. Akin, Jr., and Wright-Blodgett Company. Subpoena in Chancery.

Marshal's Return.

Marshal's Docket No. 457,  
Sept. 17, 1906.

Received in office at Alexandria on the 19th day of Sept. 1906, subpoena, for the within-named Samuel S. Akin, and on the 21st day of Sept., 1906, I made service by delivering into the hands of Samuel S. Akins, personally, a certified copy of the within subpoena in chancery.

N. L. STEWART,  
Dy. Marshal.

Filed, Sept. 27, 1906.

W. JACKSON, Clerk.

15 United States of America.

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

The President of the United States to the Marshal for the Western District of Louisiana—Greeting:

You are hereby commanded to summon Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile at Saginaw, Michigan, and represented by A. P. Pujo, agent, at Lake Charles, La., designated with the Secretary of State at Baton Rouge, Louisiana, by the defendant company, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the third Monday of December, 1906, then and there to answer a bill in chancery, filed against it, wherein the United States is complainant, and Samuel S. Akin, Jr., and the Wright-Blodgett Company, are defendants.



Herein fail not, and have you then and there this writ, with your indorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 17th day of September, in the year of our Lord one thousand nine hundred and six, and the 130 year of American Independence.

[Seal]

W. JACKSON, Clerk.

The defendant, Wright-Blodgett Co., is hereby notified that it is required to enter its appearance in the Clerk's office of the United States Circuit Court, at Lake Charles, on or before the first Monday of November, 1906, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 365. The United States of America vs. Samuel S. Akin, Jr., and Wright-Blodgett Company. Subpoena in chancery.

#### Marshal's Return.

Marshal's Docket, No. 547, Sept. 17, 1906.

Received the within writ Sept. 17, 1906, from W. Jackson, Clerk U. S. Court, and on Sept. 20, 1906, I served a certified copy of the within writ on the within-named Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile at Saginaw, Michigan, and being represented by A. P. Pugo, of Lake Charles, La., as agent, and as designated with John T. Michel, Secretary of State of La., at Baton Rouge, La., declared by defendant company, said service was made in person by delivering said certified copy hereof into the hands of said A. P. Pugo, at Lake Charles, in his office, said A. P. Pugo being to me personally known, and accepted service hereof as agent for the deft. company.

B. F. O'NEAL,

U. S. Marshal.

By HENRY O'NEAL,

Dy. U. S. Marshal.

Filed Sept. 24, 1906

W. JACKSON, Clerk.

16 In the Circuit Court of the United States for the  
Western District of Louisiana.

United States  
vs. No. 365. In equity  
Samuel S. Akin, Jr., et al.

Now comes Wright-Blodgett Company, Limited, herein made defendant as Wright-Blodgett Company, in the above-entitled proceeding, and, through undersigned counsel, enters its appearance herein as required by the rules of equity practice.

MITCHELL & YOUNG,  
Attys. for Defendant.

Indorsed: No. 365. In the Circuit Court of the United States for the Western District of Louisiana. United States vs. Samuel S. Aiken, Jr., et al. Appearance of Wright-Blodgett Co. Filed Dec. 17, 1906. W. E. Cline, Dy. Clerk.

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17 In the Circuit Court of the United States for the  
Fifth Circuit and Western District of Louisiana.

The United States of America, Complainant,  
vs. No. 365. In equity  
Samuel S. Akin, Jr., and Wright-Blodgett Company, Limited,  
Defendants.

The answer of the Wright-Blodgett Company, Limited, one of the defendants to the bill of complaint of the United States of America, plaintiff, sayeth:

1. That the matters and things set forth in the first, second, third, fourth and fifth articles of the bill of complaint are true.

2. That if the matters and things set forth in the sixth, seventh and eighth articles of the bill of complaint be true, and if the depositions of Samuel S. Akin, Jr., and his witnesses were false and fraudulent and made with the purpose to deceive, as alleged, said falsity and fraud and purpose to de-

ceive, as alleged, were and are absolutely beyond the knowledge of this defendant, who, equally with the officers and agents of the United States credited and believed said acts and depositions and acted upon the faith thereof in good faith.

3. That the matters and things set forth in the ninth article of the bill of complaint are true to this extent, that the patent issued as alleged to Samuel S. Akin, Jr., did entitle said defendant to exercise the right of absolute ownership of and over the said lands heretofore mentioned and described and assert a title to same. That said defendant did so assert a title thereto and did transfer the said title to respondent, who acquired same in good faith for adequate consideration, without notice, either actual or constructive. That if said title was acquired by fraud, respondent had no knowledge of the same, nor had it reason to suspect such fraud.

4. That the matters and things set forth in the tenth article of the bill of complaint are untrue. That it is true that Samuel S. Akin, Jr., transferred the said lands to respondent on September 28th, 1901, but that it is untrue that Aken was then without real or apparent title thereto. The fact being that at the time the right to a patent had become vested in the said Aken, so that he held the full equitable title and the equivalent  
 18        of the full apparent and legal title, and that the subsequent issuance of the patent was a mere ministerial act, which, however, inured to respondent's benefit.

Defendant especially denies that Nat Wasey and James M. Boyd, or either of them, have been or are its agents entrusted with the investigation, solicitation and purchase of lands for its use and benefit; that it, through them, or otherwise, knew of the alleged fraudulent acts and statements set forth in the bill of complaint, and it emphatically and especially denies that it did, through its officers or otherwise, aid, assist, advise and encourage the commission of the alleged fraudulent acts, or have knowledge of or suspect any fraud therein, but respondent avers that as alleged in the bill of complaint, its domicile is in Saginaw, Mich.; that it dealt with Akin in the premises in good faith and at arm's length; that he held what they be-

lieved and were advised was a good title to the lands, which title they acquired in good faith, for a valuable consideration.

Respondent specially denies that it entered into or had knowledge of any conspiracy against the United States in regard to said land, and specifically sets forth that until the service of process upon it in this suit, it had no knowledge of and no reason to suspect the claims herein urged.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged without this that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied as true to the knowledge and belief of this defendant. All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WRIGHT-BLODGETT CO., LTD.,  
MITCHELL & YOUNG &  
HALL & MONROE,

Solicitors for Defendant.

Indorsed: No. 365. United States vs. Samuel S. Akin, Jr., et al. Answer of Wright-Blodgett Co., Ltd. Filed March 15, 1907. W. E. Cline, Dy. Clerk.

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19 Circuit Court of United States for the Fifth Circuit,  
Western District of Louisiana.

United States of America  
vs. No. 365.  
Samuel Akin, Jr., and the Wright-Blodgett-Co., Ltd.

In the above numbered and entitled cause, the following agreement is entered into between M. C. Elstner, United States attorney, and J. Blanc Monroe, attorney for the Wright-Blodgett Co., Ltd.:

It is hereby agreed between the parties to this case that at

the Lake Charles term of the United States Court for the Western District of Louisiana, beginning December 21st, 1909, or thereabouts, all the testimony, evidence and documents heretofore offered by both sides shall be filed in Court, subject to objections made and to be made to same, at Alexandria, and the cases are to be continued for argument to the Alexandria term of the Court. The right of each party to introduce additional evidence in these cases not later than the close of the Alexandria term, or such term as the case may be continued to, is reserved. This agreement to be filed in the record. Cases to be continued if Monroe in Washington or for other legal cause.

Dec. 20th, 1909.

M. C. ELSTNER,  
U. S. Attorney.  
J. BLANC MONROE.

Indorsed: No. 365. In Equity. U. S. Circuit Court for Fifth Circuit and Western District of Louisiana. United States vs. Samuel Aiken, Jr., and Wright-Blodgett Co., Ltd. Agreement of U. S. Attorney, and J. Blanc Monroe for Wright-Blodgett Co., Ltd. Filed at Lake Charles, La., December 22, 1909. Leroy B. Gulotta, Clerk, U. S. Circuit Court.

20

U. S. Circuit Court.

United States of America  
vs. No. 365. In Equity.  
S. S. Akin, Jr., and Wright-Blodgett Company.

It appearing to the Court that the bill of complaint in this cause was duly filed in this Court on the 8th day of September, 1906, and that a subpoena was duly issued and served upon S. S. Akin, Jr., and duly returned into this Court on the 24th day of September, 1906, and that no appearance was made by the said S. S. Akin, Jr., or answer, demurrer or other plea filed by him; and it appearing further, that on the — day of —, 190—, an order taking said bill of complaint pro confesso as to the said S. S. Akin, Jr., was duly taken, allowed and filed in this Court; and it appearing further that since

said date, more than the legal delays having elapsed, and no answer, demurrer or other plea having been filed in this Court by the said S. S. Akin, Jr., and the law and the evidence being in favor thereof, it is ordered, adjudged and decreed that the patent issued to the said S. S. Akin, Jr., by the United States of America for the following described lands, to-wit: The south half of the northwest quarter, and the south half of the northeast quarter of Section Two, in Township Two North of Range Five West, Louisiana meridian, Vernon Parish, containing one hundred and sixty-three & 40/100 acres, be, and the same is hereby, declared cancelled and annulled and of no force and effect.

It is hereby further ordered and adjudged that defendant pay all costs of this proceeding.

This decree is without prejudice to any rights that Wright-Blodgett Company may have in this proceeding.

Thus done, read and signed in open court this 22nd day of December, 1909.

ALECK BOARMAN,

U. S. Judge.

Indorsed: No. 365. United States vs. Samuel S. Akin, Jr., and Wright-Blodgett Company. Decree as to Samuel S. Akin, Jr. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 2, folio 172.

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21      Circuit Court of United States for the Fifth Circuit,  
   Western District of Louisiana.

United States of America

vs.

No. 365.

Samuel Akin, Jr., and the Wright-Blodgett Co., Ltd.

Now comes the Wright-Blodgett Company, Ltd., co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

Wherefore, it now objects to the following testimony and evidence, and moves to strike out same:

1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

2. The bills having charged that the Wright-Blodgett Co., Ltd., had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals, on the ground of variance and irrelevancy, and asks that same be stricken out.

3. There is no allegation in the bills charging invalidity in the entries on the ground that the entryman sold or agreed to sell, prior to making final proofs, hence any attempt to show such a situation would be irrelevant and a variance, and is objected to as such, and motion made to strike same out.

4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock is objected to as irrelevant, and motion made to strike same out.

It appearing that there are filed in this case certain letters passing between the departments of government and the officers thereof, and certain reports of special agents, same are objected to by the Wright-Blodgett Co., Ltd., defendant, on the following grounds:

1. As not the best evidence—hearsay.
2. As unsworn statements of persons not sworn as witnesses.
3. As *res inter alios acta*, irrelevant and immaterial.

HALL & MONROE,  
MITCHELL & YOUNG.

Indorsed: No. 365. U. S. Circuit Court, Fifth Circuit, Western District of Louisiana. United States of America vs. Samuel Akin, Jr., and the Wright-Blodgett Co., Ltd. Motion. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk.

22 United States Circuit Court, Fifth Circuit, Western  
District of Louisiana.

United States  
vs. No. 365. In Equity.  
Samuel Akin, Jr., & The Wright-Blodgett Co.

Pursuant to reservation of right, made at the time of the taking of the testimony, and the agreement between Milton C. Elstner, and J. Blanc Monroe, on December 22nd, 1909, the Wright-Blodgett Company makes to the testimony offered by complainant the following objection:

1st. It reiterates here every objection noted by it on the stenographer's notes.

2nd. It objects to any attempt to show knowledge in it other than through the persons and in the manner specified in the bill, on the ground that same is irrelevant, and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this case. 172 Fed. 950, last ten lines.

3rd. It objects to the introduction of any evidence of whatsoever nature herein on the ground that indispensable parties and parties proper to be present are not before the Court.

4th. It objects to the entire testimony and documentary evidence of the United States as irrelevant, res inter alios acta hearsay, and not the best evidence.

5th. It objects to any attempt to show an agreement by the Wright-Blodgett Company to purchase these lands prior to final receipt on the ground that no such attack is made in the bills, and the testimony is irrelevant, and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this Court.

Indorsed: No. 365. In Equity. United States Circuit Court, Fifth Judicial Circuit, Western District of Louisiana. United States vs. Samuel Akin, Jr., and Wright-Blodgett Company. Exception Filed by Wright-Blodgett Company to Certain Testimony. Filed Feb. 25, 1910. Leroy B. Gulotta, Clerk U. S. Circuit Court, West. Dist. of Louisiana.



23 In the District Court of the United States for the  
Western District of Louisiana, Fifth Circuit of  
the United States.

United States of America

vs. No. 365. In Equity.

Samuel S. Aiken, Jr., and Wright-Blodgett Company.

This case came on for hearing this — day of May, 1912, before the Honorable Aleck Boorman, Judge presiding, and was heard upon the bill, answers, exhibits, proofs in the case and arguments of counsel, and thereupon, upon consideration thereof, and by virtue of the law and the evidence being in favor thereof, it was ordered, adjudged and decreed as follows:

It is ordered, adjudged and decreed, that the patent described in the bill issued to defendant, Samuel S. Aiken, Jr., on the 1st day of April, in the year 1902, for the south half of northwest quarter & south half of northwest quarter, Section Two, Township Two North, Range Five West, La. Mer., containing 163.42 situated in the State of Louisiana, be, and the same is hereby declared to be null and void for the said lands and premises described in the bill, as aforesaid, and the defendant, Samuel S. Aiken, Jr., and Wright-Blodgett Company, be, and are hereby required and directed to surrender and deliver and return said patent to the United States of America; and it is further adjudged and decreed, that they be forever restrained and enjoined from ever claiming or asserting any right, benefit, privilege or advantage whatsoever under said patent.

It is further ordered, adjudged and decreed, that the defendant pay the costs of this proceeding.

Done, read and signed in open court at Alexandria, Louisiana, on this 6th day of May, 1912.

ALECK BOARMAN,  
U. S. Judge.

Indorsed: No. 365. United States District Court, Western District of Louisiana. United States vs. Samuel S. Aiken, Jr., & Wright-Blodgett Company. Judgment. Filed May 6, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana. A true copy, certified under seal.

## The United States of America.

To All to Whom These Presents Shall Come, Greeting:

Certificate No. 21278.

Whereas, Samuel S. Akin, Junior, of Rapides Parish, La., has deposited in the general land office of the United States a certificate of the register of the land office at Natchitoches, Louisiana, whereby it appears that full payment has been made by the said Samuel S. Akin, Junior, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto for the south half of the northwest quarter and the south half of the northeast quarter of Section Two, in Township Two North of Range Five West of Louisiana meridian in Louisiana, containing one hundred and sixty-three acres and forty-two hundredths of an acre, according to the official plat of the survey of the said lands, returned to the general land office by the surveyor general, which said tract has been purchased by the said Samuel S. Akin, Junior.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these premises do give and grant, unto the said Samuel S. Akin, Junior, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging unto the said Samuel S. Akin, Junior, and to his heirs and assigns forever.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of April, in the year of our Lord one thousand nine hun-

dred and two, and of the Independence of the United States the one hundred and twenty-sixth.

[Seal]

By the President: T. ROOSEVELT.

By F. M. McKEAN,

Secretary.

C. H. BURTH,

Recorder of the General Land Office.

[Seal]

Recorded Louisiana, Vol. 127, page 266.

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Indorsed: Patent #21278. Entered. Samuel S. Akin, Jr. Patent. Filed 11 day of April, 1902, and recorded in Vol. No. 1, page 421, Patent Record, Vernon Parish. J. J. Hicks, Clerk. [Seal] By . . . . . Deputy. Filed in 365 Feb. 25/1910. J. F. Slattery, Examiner.

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State of Louisiana,

Parish of Vernon.

Know all men by these presents, that I, Samuel S. Akin, Jr. (whose wife if now living), of the Parish of Vernon, State of Louisiana, for and in consideration of the sum of seven hundred and seventy (770.00) dollars, to me in hand paid by Wright-Blodgett Company, Limited, a firm or corporation organized and existing under the laws of the State of Michigan, and domiciled at Saginaw, Michigan, have granted, sold and delivered, and by these presents do grant, sell and deliver, with full subrogation to all of my rights and actions of warranty against all former owners and vendors, unto the said Wright-Blodgett Company, Limited, of the City of Saginaw and State of Michigan, all that certain lot or parcel of land situated and being in the Parish of Vernon and State of Louisiana, and known and described as follows, to-wit, the south half of the northwest quarter and south half of northeast quarter of Section Two, in Township Two North, of Range Five West, La. Mer., containing in all the sum of one hundred and sixty-three acres and forty-two hundredths of an acre, more or less, according to the government survey thereof.

To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Wright-Blodgett Company,

Limited, its successors and assigns forever, and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Wright-Blodgett Company, Limited, its successors, heirs and assigns, against any person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand at Sigler, La., in the presence of Nat Wasey and ———, lawful witnesses, on this the 28th day of September, anno domini one thousand nine hundred and one.

SAMUEL S. AKINS, JR.

Attest:

NAT WASEY,  
JAMES M. BOYD.

27      State of Louisiana,  
          Parish of Rapides.

Before me, John W. Britt, a notary public, in and for said parish and state, duly commissioned and qualified, personally came and appeared Nat Wasey, to me well known, one of the attesting witnesses to the within and foregoing private act of sale of land, who being first duly sworn, says that he saw the contracting parties sign the same, also saw the other witness sign, and signed himself as such, on the day and date therein mentioned, and that he verily believes the same was done in good faith and for the uses, purposes and considerations therein set forth.

NAT WASEY.

Sworn to and subscribed to at Glenmora, Louisiana, this 30th day of September, 1901.

Before me,

JNO. W. BRITT.  
Notary Public.

[Seal]

Filed for record October 10th, 1901. Recorded Oct. 19, 1901.

W. A. WINFREE.  
Dy. Clerk & Ex-officio Recorder.

State of Louisiana,  
Parish of Vernon.

I hereby certify that the above and foregoing is a true and

correct copy as the same appears on record in my office in the Town of Leesville, Vernon Parish, Louisiana, in Book Conveyance "U" at folio 69, et seq.

In testimony whereof, I have hereunto set my hand and affixed my official seal of office on this the 23rd day of February, A. D. 1909.

A. G. WINFREE,

[Seal] Clerk of 12th District Court, Vernon Parish,  
Louisiana.

Indorsed: S. S. Akins, Jr., to Wright-Blodgett Co. Filed in evidence in 365, U. S. vs. S. S. Akin, Jr., et al., Feb. 25, 1910. J. F. Slattery, Examiner.

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28 "P" 22865 HRB WH

Department of the Interior,  
General Land Office,

Washington, D. C., July 18, 1906.

I, G. F. Pollock, acting commissioner of the general land office, do hereby certify that the annexed copies, pages 1 to 36 inclusive, of the original and final papers in the case of homestead entry No. 7739 (Natchitoches, La., series), commuted cash entry No. 21278, covering the S. 1/2 N. W. 1/4, S. 1/2 N. E. 1/4, Sec. 2, T. 2 N., R. 5 W., La. Mer., for which patent issued April 1, 1902, to Samuel S. Akin, Jr., together with copy of adverse report dated May 31, 1906, by Special Agent C. G. Coleman, and of supplemental report, are true and literal exemplifications of the original papers now on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

G. F. POLLOCK,

[Seal] Acting Commissioner of the General Land  
Office.

HRB

## Homestead—Act of May 20, 1862.

(Revised Statutes of the United States, Section 2357.)

Excess. Receiver's Receipt, No. 20772.

Receiver's Office, Natchitoches, La., May 4th, 1899.

Received of Samuel S. Akin, Jr., the sum of eight dollars fifty-five cents, being in full for three acres and forty-two hundredths of S. 1/2 of N. W. 1/4 and S. 1/2 of N. E. 1/4, Section No. 2 (Two), in Township No. 2 N., of Range No. 5 W., La. Mer., being excess in said tract over the area entered under the homestead act, per application and Receipt No. 7739.

8.55

C. J. GREENE, Receiver.

Indorsed: No. 7739. Excess Receipt. Receiver Certificate. Land office at Natchitoches, La. Homestead Application No. —.

30 Receiver's Receipt, No. 7739. Application, No. 7739.

## Homestead.

Receiver's Office, Natchitoches, La., May 4, 1899.

Received of Samuel S. Akin, Jr., the sum of eighteen dollars no cents; being the amount of fee and compensation of register and receiver for the entry of S. 1/2 of N. W. 1/4 and S. 1/2 of N. E. 1/4 of Section 2 in Township 2 N., of Range 5 W., La. Mer., under Section No. 2290, Revised Statutes of the United States.

C. J. GREENE, Receiver.

\$18.00

163.42 Excess Receipt No. 20772.

Note—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five

years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

\*\*\*\*\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the lands and improve the premises, but for no other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection of the settler disposing of the same. But the question whether the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for the recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*\*\*\*\*See note in red ink, which registers and receivers will read and explain thoroughly to person making application for lands where the affidavit is made before either of them.

31 Receiver's Duplicate Receipt No. 7739.  
Application No. 7739.

Homestead.

Receiver's Office, Natchitoches, La., May 4th, 1899.

Received of Samuel S. Akin, Jr., the sum of eighteen dollars no cents; being the amount of fee and compensation of register and receiver for the entry of S. 1/2 of N. W. 1/4 & S. 1/2 of N. E. 1/4 of Section Two in Township Two N., of Range Five W., La. Mer., under Section 2290, Revised Statutes of the United States.

\$18.00

C. J. GREENE, Receiver.

Note—It is required of the homestead settler that he shall

reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and cultivation from the date of filing affidavit to the time of payment.

\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for not other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*See note in red ink, which registers and receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

32

Homestead—Act of May 20, 1862.

(Revised Statutes of the United States, Section 2357.)

Excess Receiver's Receipt No. 20772.

Receiver's Office, Natchitoches, La., May 4, 1899.  
Received of Samuel S. Akin, Jr., the sum of eight dollars



fifty-five cents, being in full for three acres and forty-two hundredths of S. 1/2 of N. W. 1/4 & S. 1/2 of N. E. 1/4, Section No. 2, in Township No. 2 N., of Range No. 5 W., La. Mer., being excess in said tract over the area entered under the homestead act, per application and receipt No.

\$8.55

C. J. GREENE, Receiver.

Indorsed: No. 20772. Excess Receipt. Land Office at Natchitoches, La., May 4th, 1899. Samuel S. Akin, Jr. Homestead Application No. 7739.

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### Homestead Affidavit.

Department of the Interior.

United States Land Office,

Alexandria, La., May 1st, 1899.

I, Samuel S. Akin, Jr., of Rapides, Ph., La., having filed my application No. 7739, for an entry under Section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any state or territory; that I am \*a native born citizen of the United States over 21 years of age, the head of a family and owing to the distance and expense I am unable to make this affidavit at the land office; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent for any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which I might acquire from the

government of the United States should insure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws.

(Sign plainly with full Christian name.)

SAMUEL S. AKIN, JR.

Sworn to and subscribed before me, this 1 day of May, 1899, at my office at Alexandria, in Rapides County, Louisiana.

W. W. WHITTINGTON, JR.,

[Seal]

U. S. Commissioner.

\*Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such and that he is the head of a family, or is over twenty-one years of age, as the case may be. It should be stated whether applicant is native born or not, and if not, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished. (See page 45, circular of January 1, 1899).

34

Application No. 7739.

Homestead.

Department of the Interior.

United States Land Office.

Alexandria, La., May 1st, 1899.

I, Samuel S. Akin, Jr., of Rapides Parish, Elmer P. O., La., do hereby apply to enter, under Section 22892289 [2289] Revised Statutes of the United States, the S 1/2 of NW 1/4 and S 1/2 of NE 1/4 of Section 2 in Township 2 N. of Range 5 West, containing 163.42 acres.

SAMUEL S. AKIN, JR.

## United States Land Office.

Natchitoches, La., May 4th, 1899.

I, J. Ernest Breda, register of the land office, do hereby certify that the above application is for surveyed lands of the class which applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

J. ERNEST BREDA, Register.

Indorsed: No. 7739. Homestead Application. Samuel S. Akin, Jr., Natchitoches, La., May 4th, 1899. Excess Receipt No. 20772, U. S. Land Office, Natchitoches, La. Received on May . . . ., 1899, at 10 o'clock A. M. Sec. 2, Township 2 N Range 5 W. (U. S. Land Office. Received Jan. 18, 1905, 10413).

35

## No. 1. Homestead.

Land Office at Natchitoches, La.,

July 8th, 1901.

I, Samuel S. Akin, Jr., of Hineston, Rapides Ph., La., who made Homestead Application No. 7739 for the S 1/2 NE 1/4 and S 1/2 of NW 1/4, Sec. 2, Tp. 2 N., R. 5 W. La. Mer., do hereby give notice of my intention to make commutation final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before James M. Boyd, U. S. Com., at Cora, La., on August 17, 1901, by two of the following witnesses:

|                 |    |           |     |
|-----------------|----|-----------|-----|
| Frank Mashon    | of | Hineston, | La. |
| Allen Carruth   | of | "         | "   |
| Joseph Williams | of | "         | "   |
| W. S. Maddox    | of | "         | "   |

SAMUEL S. AKIN, JR.

(Signature of Claimant).

Land Office at Natchitoches, La.

July 8th, 1901.

Notice of the above application will be published in the

Vernon News printed at Leesville, La., which I hereby designate as the newspaper published nearest the land described in said application.

J. ERNEST BREDÁ, Register.

Notice to Claimant—Give time and place of proving up and name the title of the office before whom proof is to be made; also give names and post-office address of four neighbors, two of whom must appear as your witnesses.

Indorsed: No. 7739. Samuel S. Akin, Jr. Commutation 2..2..5.... Vernon News. July 10 to Aug. 17/01.

36

### Notice for Publication.

Department of the Interior.

Land Office at Natchitoches, La.

July 10, 1901.

Notice is hereby given that the following named settler has filed notice of his intention to make final commutation proof in support of his claim, and that said proof will be made before James M. Boyd, U. S. Co., at Cora, La., on Aug. 17, 1901, viz., H. E. 7739, Samuel S. Akin, Jr., for the S 1/2 NE 1/4 and S 1/2 NW 1/4, Sec. 2, T. 2 N., R. 5 W. La. Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz.:

Frank Mushon, Allen Carruth, Joseph Williams, W. S. Maddox, all of Hinston P. O., La.

J. ERNEST BREDÁ, Register.

37

State of Louisiana,  
Parish of Vernon.

Before me, the authorized authority on this day personally appeared Geo. F. Smedley, editor of the Vernon News, Leesville, Louisiana, who first being duly sworn, says that notice of final proof of Samuel S. Akin, Jr., H. E. No. 7739, first appeared in its issue on July 11th, 1901, and each weekly

issue thereafter for 30 days, last publication appearing in the issue of August 24th, 1901.

GEO. F. SMEDLEY, Editor.

Sworn to and subscribed before me at my office at Leesville, La., this 17th day of August, 1901.

[Seal]

JAMES M. BOYD, U. S. Com.

38

Notice for Publication.

Department of the Interior.

Land Office at Natchitoches, La.

July 10, 1901.

Notice is hereby given that the following named settler has filed notice of his intention to make final commutation proof in support of his claim, and that said proof will be made before James M. Boyd, U. S. Com. at Cora, La., on August 17, 1901, viz., H. E. 7739, Samuel S. Akin, Jr., for the S 1/2 NE 1/4 and S 1/2 NW 1/4, Sec. 2, T. 2 N., R. 5 W. La. Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz.:

Frank Mushon, Allen Carruth, Joseph Williams, W. S. Maddox, all of Hineston P. O., La.

J. ERNEST BREDA, Register.

39

Certificate As to Posting of Notice.

Department of the Interior.

United States Land Office.

At Natchitoches, La.

Sept. 18, 1901.

I, J. Ernest Breda, register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 10th day of July, 1901.

J. ERNEST BREDA, Register.

Indorsed: 7739. Posting Certificate.

40 (To be used in cases of commuted homestead entries. For taking the testimony of claimant and his witnesses in making commutation proof, use the prescribed forms for "Homestead Proof.")

### Affidavit Required of Claimant.

(Section 2301 of the Revised Statutes of the United States).

I, Samuel S. Akin, Jr., claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my Homestead Entry No. 7739, made upon the S 1/2 NE 1/4 and S 1/2 NW 1/4, Section 2, Township 2 N., Range 5 W., do solemnly swear that I made settlement upon said land on the 4th day of May, 1899, and that since such date, to-wit, on the 17th day of August, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated about two acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except .....

(Sign plainly with full Christian name).

SAMUEL S. AKIN, JR.

Subscribed and sworn to before me, this 17th day of August, 1901, at my office at Cora in Vernon Ph., Louisiana.

JAMES M. BOYD,

U. S. Com. for W. D. of La.

Indorsed: 7739. Commutation Affidavit.

## 41 Homestead Proof—Testimony of Witness.

I, FRANK MASHON, being called as witness in support of the Homestead Entry of Samuel S. Akin, Jr., for S 1/2 NW 1/4 and S 1/2 NE 1/4, Sec. 2, Tp. 2 N., R. 5 W. La. Mer., testifies as follows:

Ques. 1. What is your name, age and post-office address?

Ans. Frank Mashon, age 68 years; Hineston, Rapides Ph., La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land, whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Ordinary pine land, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. May 4, 1899, and established actual residence at the same time.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact).

Ans. They have.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent at all.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 9. What improvements are on the land and what is their value?

Ans. One house, 16x18, side room, orchard, stables and well of water, valued at \$75.00.

Ques. 10. Are there any indications of coal, salines or minerals of any kind on the homestead? (If so, describe what they are and state whether the land is more valuable for agricultural than [than] for mineral purposes).

Ans. None, as I know of.

42 Ques. 11. Has the claimant mortgaged, sold or contracted to sell any portion of said homestead.

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he has.

his  
FRANK X MASHON.  
mark

(Sign plainly with full Christian name).

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 17th day of August, 1901, at my office at Cora in Vernon Ph., Louisiana.

(See note on fourth page).

[Seal]

JAMES M. BOYD.  
U. S. Com. for W. D. of Ia.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land or otherwise).



## 43 Homestead Proof—Testimony of Witnesses.

I, ALLEN CARRUTH, being called as a witness in support of the Homestead Entry of Samuel S. Akin, Jr., for S 1/2 NW 1/4 and S 1/2 NE 1/4, Sec. 2, Tp. 2 N., R. 5 W. La. Mer. testifies as follows:

Ques. 1. What is your name, age and post-office address?

Ans. Allen Carruth, age 41 years; Hineston P. O., Rapides Ph. La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land, whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Ordinary pine land, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. May 4, 1899, and established actual residence at the same time.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact).

Ans. They have.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent at all.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 9. What improvements are on the land and what is their value?

Ans. One log house, 16x18, side room, stables, orchard and well, valued at \$75.00.

44 Ques. 10. Are there any indications of coal, salines or minerals of any kind on the homestead? (If so, describe what they are and state whether the land is more valuable for agricultural than for mineral purposes).

Ans. None, as I know of.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am. I think he has.

ALLEN CARRUTH.

(Sign plainly with full Christian name).

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 17th day of August, 1901, at my office at Cora in Vernon Ph., Louisiana.

(See note on fourth page).

[Seal]

JAMES M. BOYD,

U. S. Com. for W. D. of La.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land or otherwise).

## 45 Homestead Proof—Testimony of Claimant.

I, SAMUEL S. AKIN, JR., being called as a witness in his own behalf in support of Homestead Entry No. 7739 for S 1/2 NW 1/4 and NE 1/4, Sec. 2, Tp. 2 N., R. 5 W. La. Mer., testifies as follows:

Ques. 1. What is your name, age and post-office address?

Ans. Samuel S. Akin, age 31 years; Hinston P. O. Rapides Ph., La.

Ques. 2. Are you a native born citizen of the United States, and if so, in what state of [or] territory were you born?\*

Ans. I am, was born in Louisiana.

Ques. 3. Are you the identical person who made homestead entry, No. 7739, at the Natchitoches Land Office on the 4th day of May, 1899, and what is the description of the land now claimed by you?

Ans. I am. S 1/2 NW 1/4 and S 1/2 NE 1/4, Sec. 2, Tp. 2 N. R. 5 W. La. Mer.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof).

Ans. May 4th, 1899, and established actual residence at the same time; one log house, 16x18, side room and stables, orchard and good water, valued at \$75.00.

Ques. 5. Of whom does your family consist, and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact).

Ans. Wife and child. We have resided continuously.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. I have not been absent at all.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. About two acres, raising two crops thereon.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

46 Ques. 9. What is the character of the land?

Is it timber, mountainous, prairie, grazing or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable.

Ans. Ordinary pine land, valuable for farm and timber purposes.

Ques. 10. Are there any indications of coal, salines or minerals of any kind on the land? (If so, describe what they are and state whether the land is more valuable for agricultural than for mineral purposes).

Ans. None, as I know of.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same).

Ans. I have not.

Ques. 12. Have you sold, conveyed or mortgaged any portion of the land; and, if so, to whom and for what purpose?

Ans. I have not.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same and state where the same is kept).

Ans. I have not.

Ques. 14. Describe by legal subdivisions or by number, kind of entry, and office where made, any other entry or filing (not mineral) made by you since August 30, 1890.

Ans. I have not made any of any kind, only one above mentioned.

.....  
(Sign plainly with full Christian name).

\*(In case the party is of foreign birth a certified transcript from the Court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases).

47 I hereby certify that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me, this 17 day of August, 1901, at my office at Cora in Vernon Ph., Louisiana.

(See note below).

[Seal]

JAMES M. BOYD,  
U. S. Com. for W. D. of La.

Note—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

#### Title LXX.—Crimes. Ch. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any Court of the United States until such time as the judgment against him is reversed. (Sec. 1750).

Indorsed: Homestead Proof. Land Office at Natchitoches, La. Original Application No. 7739. Cash Certificate No.

21278. Approved: J. Ernest Breda, Register. C. J. Greene,  
Receiver. Coms. \$400

Fees 730 words 1.10

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\$401.10

U. S. Land Office, Natchitoches, Received on August 26, 1901,  
at 9 o'clock . . . . M.

48 No. 21278.

Receiver's Office at Natchitoches, La.

Sept. 18th, 1901.

Received from Samuel S. Akin, Jr., of Hineston P. O. . . . .  
Ph., Louisiana, the sum of four hundred dollars and no cents;  
being in full for the S 1/2 of NW 1/4 and S 1/2 of NE 1/4  
quarter of Section No. 2 in Township No. 2 North of Range  
No. 5 W. La. Mer., containing one hundred sixty-three acres  
and 42 hundredths, at \$2.50 per acre.

[\$400.00]

C. J. GREENE, Receiver.

\$1.10 testimony fee received. Number of written words  
730. Rate per 100 words, 15 cents.

Under Sec. 2301 R. S. Orig. Hd. 7739.

Credit by Ex. No. 20792. . . . . \$8.55 Ex area 3.42 A.

Indorsed: C. J. Greene to Samuel S. Akin, Jr. Final  
Receipt. Filed 10 day of Oct., 1901, and recorded in Vol.  
No. 1, page 278, Patent Record, Vernon Parish, W. A. Win-  
free, Dy. Clerk. 1902-38856. Send patent to Fielder B.  
Chew, Washington, D. C. Filed Meh. 5, 1902.

49 No. 21278.

Receiver's Office at Natchitoches, La.

Received from Samuel S. Akin, Jr., of Hineston P. O.,  
Rapides Ph., Louisiana, the sum of four hundred dollars and  
no cents; being in full for the S 1/2 of SW 1/4 and S 1/2 of  
NE 1/4, quarter of Section No. 2 in Township No. 2 N. of  
Range No. 5 W. La. Mer., containing one hundred sixty-three  
acres and 42 hundredths, at \$2.50 per acre.

[\$400.00]

C. J. GREENE, Receiver.

\$1.10 testimony fee received. Number of written words  
730. Rate per 100 words, 15 cents.

Under Sec. 2301 R. S. Orig. Hd. 7739.

Credit by Ex. No. 20792. . . . . \$8.55 Ex area 3.42 A.

50 No. 21278.

Land Office at Natchitoches, La.

Sept. 18th, 1901.

It is hereby certified that, in pursuance of law, Samuel S. Akin, Jr., residing at Hineston P. O. in Rapides Ph., State of Louisiana, on this day purchased of the register of this office the S 1/2 of NW 1/4 and S 1/2 of NE 1/4 of Section No. Two in Township No. 2 North of Range No. 5 West of the La. principal Meridian, Louisiana, containing 163.42 acres at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars and . . . . . cents, for which the said Samuel S. Akins, Jr., has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the commissioner of the general land office, the said Samuel S. Akin, Jr., shall be entitled to receive a patent for the lot above described.

J. ERNEST BREDA, Register.

Under Sec. 2301 R. S. Orig. Hd. 7739:

Cred. by Ex. 20772, \$8.55 Ex area 3.42 A.

Indorsed: No. 21278. Cash Entry Land Office at Natchitoches, La. Sec. 2, Town. 2 N., Range 5 W. La. Mer. Orig. Hd. 7739. 1902. 38856 Pat. sent to Fielder B. Chew, Apr. 5/02. City. Div. C, List No. 11. Approved March 4, 1902. by O. N. Burke, Clerk. Division "C," Patented April 1, 1902. Recorded Vol. 127, page 266. 4/127. Filed in 365 Feb. 25/1910. J. F. Slattery, Examiner.

51 Special Agents Must Retain a Press Copy of This Report.

Report of Fraudulent Claim or Entry.

This form must be used only in cases found or believed to be fraudulent or abandoned. Cases found to be lawfully made and maintained need not be reported on this form, but must be reported by letter containing brief statement of the facts.

In cases of homestead claims the blanks must be filled up strictly as here indicated. In other cases the form will be followed as closely as applicable, and in all cases reported such other points will be covered as the nature of the case may require.

In every instance when names of parties or witnesses are given, the post-office address and residence must also be stated.

1. Name of claimant: Samuel S. Akin, Jr.

2. Description of land covered by filing or entry: S 1/2 NW 1/4 and S 1/2 NE 1/4, Sec. 2, Tp. 2 N., R. 5 W. La. Mer.

3. Date of examination: May 24, 1906.

4. Character of land: (Timber, Mineral, Agricultural or Desert). If timber land, whether if cleared, it would be unfit for agricultural; if for timber-culture entry, whether section is naturally void of timber; if desert, whether grass or other agricultural crop could be produced without artificial irrigation; if mineral, character and evidence thereof.

Pine timbered land, which, if cleared, would be suitable for cultivation.

5. Date and number of filing or entry; if proof has been made, date of proof and number of final certificate:

H. E. No. 7739, May 4, 1899, C. E. 21278, Sept. 18, 1901, Pat. April 1, 1902.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant and nature of claim:

The land is unoccupied, but is claimed by Wright-Blodgett



Company, Limited, of Saginaw City, Mich., by virtue of a warranty deed from entryman.

7. Is the land inclosed for stock ranging or other purposes, and if so, by whom? Give extent of such inclosure and describe the land inclosed:

The land is not inclosed.

8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold:

No timber cut.

52 9. Character, extent and value of improvements in detail, when and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were constructed and cost of same. If a timber-culture entry, amount and date of breaking, planting, etc.:

There are no evidences of improvement of any character on the land. Entryman built a board cabin about 10x12 ft. on the land about six months after he made the entry, and inclosed and plowed about a half acre without clearing or even deadening the trees thereon; but never made a crop there. All improvements removed or destroyed by fire.

10. Residence of claimant: When actually established on the land and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to make the entry, and is known in the neighborhood of the claim:

Claimant residing during the life of this entry near Hines-ton, La., about 15 miles distant. He was a single man at that time and lived with his father. He never established a residence on the tract and made the entry for speculative purposes.

11. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant;

whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferee, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record; whether the entry has been abandoned or relinquished, and if so, when and for whose benefit:

There is no positive evidence that the entry was made in the interest but it is charged and believed in the vicinity that it was made at the instance of James M. Boyd, then U. S. Commissioner, and before whom final proof was afterwards made. The records of Vernon Parish show that this claim was conveyed to the Wright-Blodgett Co., Ltd., of Saginaw City Mich., by W. D., Sept. 28, 1901, consideration \$770.00, Rec. Bk. "U," p. 69.

12. Names and post-office address of witnesses; their reliability; abstract of their testimony:

Allen Carruth and Frank Mashon, Leander P. O., Charles M. Ingalls, Stille, La., & F. M. Ingalls, Oakdale, La., A. A. Smith and J. D. Wilson are reliable will testify to the facts set forth in this report.

13. Have you secured affidavits of witnesses? If so, submit them or copies thereof:

Yes; and they are herewith submitted.

14. Have you requested claimant to make a statement? If so, and he does not intend to offer proof, did you try to obtain a relinquishment or an affidavit to that effect (without coercion?)

No.

53 15. Was the fraud willful?

Yes.

16. Have any legal proceedings been instituted?

No.

17. Action recommended by agent:

That a suit be instituted to set aside and annul the patent. Nat Wasey and James M. Boyd were the accredited agents of the Wright-Blodgett Co., and knew that the claim was a fraud-

ulent one; in fact they assisted in the perpetration of the fraud.

Dated at Leesville, La., May 31st, 1906.

CLAYTON G. COLEMAN,  
Special Agent, General Land Office.

Note—If the space allotted under any of the above headings is not sufficient to state the particulars required, state the same on a separate sheet referring to the number of the question and attach the same to the report.

Indorsed: Report of Clayton G. Coleman, Special Agent, G. L. O. Leesville, La. May 31st, 1906. In the case of Homestead Entry No. 7739 C. E. 21278. L. O. Natchitoches. Name: Samuel S. Akin, Jr. Tract S 1/2 NW 1/4 & S 1/2 NE 1/4. Sec. 2, Tp. 2 N., R. 5 W. No. of Report: 19. Recommendation: Cancellation. Date of office letter directing the investigation. File 22865 190 New Orleans, June 4/06. Respectfully forwarded: Approved: S. W. Williams, Chief Field Div. 6-12-06. To Williams for return of papers. HRB P.

54 State of Louisiana,  
Vernon Parish, ss.

ALLEN CARRUTH having been duly sworn, deposes and says that he is a citizen of the United States, forty-six years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he is well acquainted with the S 1/2 NW 1/4 and S 1/2 NE 1/4 of Section 2, Twp. 2 N., R. 5 W., La. Mer., which was entered as a homestead under the land laws of the United States in May, 1899, and that he has lived within about a mile of the same continuously during the past eighteen years; that he was asked by the entryman, Sylvester Akin, to be a witness to his final proof, and that he told him that he could not be a witness for him, because he knew that he had never lived on the said tract; that he was told by James M. Boyd, U. S. Commissioner, before whom final proof was made, that his testimony to that effect would not effect the validity of the final proof; that he testified that the entryman had never resided on the claim; that he is now satisfied

that the testimony given by him was afterwards changed by the said commissioner; that the said Sylvester Akin lived at that time on Bayou Rapides in Rapides Parish, about forty miles distant from the said homestead entry.

Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

ALLEN A. CARRUTH.

Subscribed and sworn to before me at Vernon Parish, Louisiana, this 24th day of May, A. D. 1906.

CLAYTON G. COLEMAN,

Special Agent, G. L. O.

55 State of Louisiana,  
Vernon Parish, ss.

Frank Mashon having been duly sworn, deposes and says that he is a citizen of the United States, seventy-five years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he is well acquainted with the land embraced in the homestead entry entered by Sylvester Akin, under the land laws of the United States in May, 1899, involving the S 1/2 NW 1/4 and the S 1/2 NE 1/4, Section 2, Twp. 2 N., R. 5 W., La. Meridian, and that he has lived within a mile and a half of said tract during the past eighteen years; that he was one of the witnesses of the said Akin in making his final proof before J. M. Boyd, U. S. Commissioner at Cora, La.; that he then testified that the said Akin had never lived on said entry, and that he believes that said testimony was either changed afterwards or else read falsely to him, as he could not read or write; that the said Akin never at any time resided on said homestead entry, but at the time, to-wit, in 1899 and 1900, lived on Bayou Rapides in Rapides Parish, about forty miles distant from the said homestead entry.

Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

FRANK      his  
                 X      MASHON.  
                 mark

Witnesses:

SIMEAN C. DEEN.

FRANKLIN CARRUTH.

Subscribed and sworn to before me at Vernon Parish,  
Louisiana, this 25th day of May, A. D. 1906.

CLAYTON G. COLEMAN,  
Special Agent, G. L. O.

56            807 La.

Department of the Interior.

General Land Office.

New Orleans, Louisiana, July 3, 1906.

Honorable Commissioners,  
General Land Office,  
Washington, D. C.

Sir:

Referring to the report of special agent, Clayton G. Coleman, of May 31, 1906, in the case of Samuel S. Akin, Jr., Natchitoches H. E. 7739, C. E. 21278 for the S 1/2 NW 1/4, S 1/2 NE 1/4, Sec. 2, Tp. 2 N., R. 5 W., (File 22865). I have the honor to transmit herewith additional affidavit taken by Agent Coleman in this case, the same being the affidavit of Allen Carruth, which shows that the parties who negotiated the sale of the property were the agents of the Wright-Blodgett Company, and had knowledge of the fraud.

Very respectfully,

OWG.

S. W. WILLIAMS,  
Chief of Field Division.

Indorsed: 40/420. U. S. General Land Office, Received July 6, 1906. 110033. S. W. Williams. Chief of Field Div. New Orleans, La. July 3, 1906. Transmits additional affidavit of Allen Carruth taken by Agt. C. G. Coleman to accom. his report on Natchitoches, La., H. E. 7739, C. E. 21278 of Samuel S. Akin, Jr. Reference to File "P" 22865.

57 State of Louisiana,  
Vernon Parish, ss.

ALLEN CARRUTH having been duly sworn, deposes and says that he is a citizen of the United States, forty-six years of age, a resident of Vernon Parish, Louisiana, and a farmer by occupation; that he is acquainted with Nat Wasey, who was an accredited and duly authorized agent of the Wright-Blodgett Company, Limited, of Saginaw City, Michigan, to purchase and acquire for them timbered lands in Vernon Parish, Louisiana, from the year 1899 to 1904, inclusive, and that he sold to the said Wasey 80 acres of land in said parish for the said company, and that the deed for the same was made to the said Wright-Blodgett Company, and the purchase money for the same was paid to him by the said Wasey; that the said Wasey had one James M. Boyd of Cora, La., who was at that time a United States Commissioner, associated with him as an assistant or sub-agent; that they always examined thoroughly all lands purchased by them for the said company, both as to the amount of timber thereon, the improvements and status of the same before purchasing them; that they examined in such manner the homestead of Samuel S. Akin, which is described as the S 1/2 N 1/2 of Sec. 2, Twp. 2 N., R. 5 W., La. Mer., before they purchased it; that they knew well that the said Akin had not complied with the requirements of the homestead law; that they knew that the said Akin had not resided on his said homestead during the period of the life thereof, but had resided near Loyd's Bridge in Rapides Parish during that time, a distance of more than forty miles from the said claim; that he, affiant, not only told them of these facts, but so testified as a witness in the final proof of said homestead.

Affiant makes this affidavit of his own free will and accord and in the interest of right and justice.

A. A. CARRUTH.

Subscribed and sworn to before me at Vernon Parish, La.,  
June 9th, A. D. 1906. CLAYTON G. COLEMAN,  
Special Agent, G. L. O.

Indorsed: To be sent to G. L. O. in S. S. Akin, Jr., Case  
807 La. U. S. General Land Office, Received July 6, 1906,  
110033. Dep't of the Interior. Received 2934. 10 1906.  
L. & R. R. Div. Filed Sept. 8th, 1906. W. Jackson, Clerk.

58

United States

vs.

No. 380.

S. E. Bryers, et al.

Abstract of Title to Wright Blodgett Company, Limited, From  
the Notarial and Abstract Office of J. J. Hicks, Leesville,  
La.

W. 1/2 of N. E. 1/4, S. E. 1/4 of N. E. 1/4 and N. W. 1/4  
of S. E. 1/4 of Sec. 1, Twp. 1 S., Range 6 W.; W. 1/2 of  
N. W. 1/4 of Sec. 12, Twp. 1 S., Rng. 7 W.; N. E. 1/4 of  
N. W. 1/4 of Sec. 10, Twp. 1 S., Rng. 7 W.; S. 1/2 of N. E.  
1/4 of Sec. 1, Twp. 1 S., R. 7 W.; N. 1/2 of N. E. 1/4 of  
Sec. 34, Twp. 3 N., Rng. 5 W.; S. E. 1/4 of N. E. 1/4, N. E.  
1/4 of S. E. 1/4 of Sec. 10, T. 1 S., R. 7 W.; S. 1/2 of N. W.  
1/4 & S. 1/2 of N. E. 1/4 of Sec. 2, Twp. 2 N., Rng. 5 West;  
S. 1/2 of S. E. 1/4 of Sec. 29, Twp. 1 N., Rng. 7 W.; S. E.  
1/4 of S. E. 1/4 of Sec. 33, Twp. 1 N., Rng. 7 W., and 30 acres  
from the east side S. E. 1/4 of S. E. 1/4 of Sec. 35, Twp. 1 S.,  
Range 7 West, in Vernon Parish, La.

59

Charles P. Johnston, Rec., Vendor.  
Ellen Delana, Vendee.

Instrument, Final Recit.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 1,   | 1901. |
| Date of ackn'ment,  | Oct.   | 1,   | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, Charles B. Johnston,  
Rec.

|                              | Month. | Day.  | Year. |
|------------------------------|--------|-------|-------|
| When filed,                  | Oct.   | 17,   | 1901. |
|                              | Book.  | Page. |       |
| Where recorded, P. R. No. 1, | 280.   |       |       |
| Consideration, \$200.        |        |       |       |

Part of Section.

W. 1/2 of N. E. 1/4, S. E. 1/4 of N. E. 1/4 & N. W. 1/4  
of S. E. 1/4, Sec. 1, Twp. South 1 S., Range West 6 W. No.  
of acres, 160.20. Remarks —.

Ellen Delana, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 20,  | 1901. |
| Date of ackn'ment,  | Sept.  | 23,  | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|                 | Month.           | Day. | Year. |
|-----------------|------------------|------|-------|
| When filed,     | Sept.            | 24,  | 1901. |
| Where recorded, | Book U, page 66. |      |       |
| Consideration,  | \$800.00.        |      |       |

#### Part of Section.

W. 1/2 of N. E. 1/4, S. E. 1/4 of N. E. 1/4 & N. W. 1/4  
of S. E. 1/4, Sec. 1, Twp. South, 1 S., Range West 6 W. No.  
of acres, 160.20.

Witnesses to signature of Ellen Delana:

NAT WASEY,  
JAMES M. BOYD.

Charles P. Johnston, Recr., Vendor.

Hugh McDonald, Vendee.

Instrument, Final Receipt.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 1,   | 1901. |
| Date of ackn'ment,  | Oct.   | 1,   | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, Charles P. Johnston,  
Recr.

|                 | Month.                      | Day. | Year. |
|-----------------|-----------------------------|------|-------|
| When filed,     | Oct.                        | 10,  | 1901. |
| Where recorded, | Book P. R. No. 1, page 277. |      |       |
| Consideration,  | \$111.00.                   |      |       |

Part of Section, W. 1/2 of N. W. 1/4, Sec. 12, Twp. South  
1 S., Range West 7 W. No. of acres, 88.86.



60

Hugh McDonald, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 5,   | 1901. |
| Date of ackn'ment,  | Oct.   | 7,   | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|                 | Month.           | Day. | Year. |
|-----------------|------------------|------|-------|
| When filed,     | Oct.             | 10,  | 1901. |
| Where recorded, | Book U, page 74. |      |       |
| Consideration,  | \$380.00.        |      |       |

Part of Section.

W. 1/2 of N. W. 1/4, Sec. 12, Twp. South 1 S., Range  
West 7 W. No. of acres, 88.86.

Witnesses to signature of Hugh McDonald:

JAMES M. BOYD,  
NAT WAZEY.

Charles P. Johnston, Rec., Vendor.  
Thomas J. Perkins, Vendee.

Instrument, Final Recept.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 1,   | 1901. |
| Date of ackn'ment,  | Oct.   | 1,   | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, Charles P. Johnston.  
Receiver.

|                 | Month.                   | Day. | Year. |
|-----------------|--------------------------|------|-------|
| When filed,     | Oct.                     | 10,  | 1901. |
| Where recorded, | Book P. R. #1, page 276. |      |       |
| Consideration,  | \$49.58.                 |      |       |

Part of Section.

N. E. 1/4 of N. W. 1/4, Sec. 10, Twp. South 1 S., Range  
West 7 W. No. of acres, 39.67.

Thomas J. Perkins, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 5,   | 1901. |
| Date of ackn'ment,  | Oct.   | 7,   | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|                 | Month.           | Day. | Year. |
|-----------------|------------------|------|-------|
| When filed,     | Oct.             | 10,  | 1901. |
| Where recorded, | Book U, page 70. |      |       |
| Consideration,  | \$140.           |      |       |

#### Part of Section.

N. E. 1/4 of N. W. 1/4, Sec. 10, Twp. South 1 S., Range West 7 W. No. of acres, 39.67.

Witnesses to signature of Thomas J. Perkins:

JAMES M. BOYD,  
NAT WASEY.

61 Charles P. Johnston, Recr., Vendor.  
James F. Calhoun, Vendee.

Instrument, Final Rept.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 17,  | 1901. |
| Date of ackn'ment,  | Sept.  | 17,  | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, Charles P. Johnston,  
Recr.

|                 | Month.                    | Day. | Year. |
|-----------------|---------------------------|------|-------|
| When filed,     | Oct.                      | 10,  | 1901. |
| Where recorded, | Book P R No. 1, page 276. |      |       |
| Consideration,  | \$112.27.                 |      |       |

#### Part of Section.

S. 1/2 of N. E. 1/4, Sec. 1, Twp. South 1 S., Range West,  
7 W. No. of acres, 89.82.

James F. Calhoun, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sept.  | 30,  | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book U, page 80.

Consideration, \$310.00.

Part of Section.

S. 1/2 of N. E. 1/4, Sec. 1, Twp. South 1 S., Range West,  
7 W. No. of acres, 89.82.

Witnesses to signature of Jas. F. Calhoun:

NAT WASEY,

JAMES M. BOYD.

C. J. Grina, Receiver, Vendor.  
Samuel E. Bryers, Vendee.

Instrument, Final Receipt.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 18,  | 1901. |
| Date of ackn'ment,  | Sept.  | 18,  | 1901. |
| No. of witnesses,   | —      |      |       |

Officer before whom authenticated, C. J. Grinee, Receiver.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book P. R. No. 1, page 278.

Consideration, \$189.13.

Part of Section.

N. 1/2 of N. E. 1/4, Sec. 34, Twp. South 3 N., Range West  
5 W. No. of acres, 75.65.

62

Samuel E. Bryers, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sept.  | 30,  | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

| Month.      | Day. | Year. |
|-------------|------|-------|
| When filed, | Oct. | 10,   |

When filed, Oct. 10, 1901.

Where recorded, Book U, page 77.

Consideration, \$280.00.

Part of Section.

N. 1/2 of N. E. 1/4, Sec. 34, Twp. South 3 N., Range West  
5 W. No. of acres, 75.65.

Witnesses to signature of Samuel E. Bryers:

NAT WASEY,

A. H. DAVIS.

Charles P. Johnston, Rer., Vendor.

Thomas Q. Wright, Vendee.

Instrument, Final Rept.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 1,   | 1901. |
| Date of ackn'ment,  | Oct.   | 1,   | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, Charles P. Johnston,  
Rer.

| Month.      | Day. | Year. |
|-------------|------|-------|
| When filed, | Oct. | 10,   |

When filed, Oct. 10, 1901.

Where recorded, Book P R No. 1, page 277.

Consideration, \$99.17.

Part of Section.

S. E. 1/4 of N. E. 1/4, N. E. 1/4 of S. E. 1/4, Sec. 10, Twp.  
South, 1 S., Range West 7 W. No. of acres, 79.34.

Thomas Q. Wright, Vendor.  
Wright-Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 5,   | 1901. |
| Date of ackn'ment,  | Oct.   | 7,   | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book U, page 75.

Consideration, \$280.00.

Part of Section.

S. E. 1/4 of N. E. 1/4, N. E. 1/4 of S. E. 1/4, Sec. 10,  
Twp. South 1 S., Range West 7 W. No. of acres, 79.34.

Witnesses to signature of Thomas Q. Wright:

GENTRY JOHNSON,

NAT WASEY.

63

C. J. Greene, Receiver, Vendor.

Samuel S. Akin, Jr., Vendee.

Instrument, Final Rept.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 18,  | 1901. |
| Date of ackn'ment,  | Sept.  | 18,  | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, C. J. Greene, Receiver.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Recorded P. R. No. 1 Book, page 278.

Consideration, \$400.

Part of Section.

S. 1/2 of N. W. 1/4 and S. 1/2 of N. E. 1/4, Sec. 2, Twp.  
South 2 N., Range West 5 W. No. of acres, 163.42.

Samuel S. Akin, Jr., Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sep.   | 30,  | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

| Month. | Day. | Year. |
|--------|------|-------|
|--------|------|-------|

When filed, Oct. 10, 1901.

Where recorded, Book U, page 69.

Consideration, \$770.00.

#### Part of Section.

S. 1/2 of N. W. 1/4, S. 1/2 of N. E. 1/4, Sec. 2, Twp. South  
2 N., Range West 5. No. of acres, 163.42.

Witnesses to signatures of Samuel S. Akin, Jr.:

NAT WASEY,

JAMES M. BOYD.

C. J. Greene, Receiver, Vendor.

George W. Johnson, Vendee.

Instrument, Final Recept.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 23,  | 1901. |
| Date of ackn'ment,  | Sept.  | 23,  | 1901. |
| No. of witnesses,   | —      |      |       |

Officer before whom authenticated, C. J. Greene, Rec.

| Month. | Day. | Year. |
|--------|------|-------|
|--------|------|-------|

When filed, Oct. 10, 1901.

Where recorded, Book P R No. 1, page 278.

Consideration, \$100.00.

#### Part of Section.

S. 1/2 of S. E. 1/4, Sec. 29, Twp. South 1 N., Range West  
7 W. No. of acres, 80.

64

George W. Johnson, Vendor.  
Wright-Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sept.  | 30,  | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book U, page 79.

Consideration, \$240.00.

#### Part of Section.

S. 1/2 of S. E. 1/4 and five acres out of the southeast corner of southeast quarter of southwest quarter, excepting and reserving about fourteen acres where my house and field now stands, Sec. 29, Twp. South 1 N., Range West 7 W. No. of acres, 80.

Witnesses to signature of Geo. W. Johnson:

NAT WASEY,  
JAMES M. BOYD.

C. J. Greene, Receiver, Vendor.  
Gipson Johnson, Vendee.

Instrument, F. R.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 23,  | 1901. |
| Date of ackn'ment,  | Sept.  | 23,  | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, C. J. Greene, Receiver.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book P. R. No. 1, page 279.

Consideration, \$50.00.

#### Part of Section.

S. E. 1/4 of S. E. 1/4, Sec. 33, Twp. South 1 N., Range West 7 W. No. of acres, 40.67.

Gipson Johnson, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sept.  | 30,  | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book U, page 67.

Consideration, \$162.00.

Part of Section.

S. E. 1/4 of S. E. 1/4, Sec. 33, Twp. South 1 N., Range West  
7 W. No. of acres, 40.67.

Witnesses to signature of Gipson Johnson:

NAT WASEY,

JAMES M. BOYD.

65

United States, Vendor.

Thomas J. Wisby, Vendee.

Instrument, Patent.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Mch.   | 23,  | 1901. |
| Date of ackn'ment,  | Mch.   | 23,  | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, William McKinley, Pres.

U. S.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book P R No. 1, page 280.

Consideration, —.

Part of Section.

S. E. 1/4 of S. E. 1/4 together with other lands, Sec. 35,  
Twp. South 1 S., Range West, 7 W. No. of acres, 40, more  
or less.



Thomas J. Wisby, Vendor.  
Wright-Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 5,   | 1901. |
| Date of ackn'ment,  | Oct.   | 7,   | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

When filed, Book U, page 73.

Consideration, \$100.00.

#### Part of Section.

Thirty acres from the east side of S. E. 1/4 of S. E. 1/4,  
Sec. 35, Twp. South 1 S., Range West 7 W. No. of acres, 30.

Witnesses to signature of Thomas J. Wisby:

JAMES M. BOYD,

NAT WASEY.

State of Louisiana,  
Parish of Vernon.

Office of the 12th Judicial District Court and Ex-officio Recorder in and for the State and Parish Aforesaid.

I do hereby certify that I have made a careful examination of the above abstract of title to Wright Blodgett Company, Limited, and according to the records of the aforesaid parish and state the said Wright-Blodgett Co., Ltd., are owners of the property above described. I further certify that there are no mortgages, liens nor incumbrances of record against the property above described. I further certify that there are no suits pending or judgment against the parties named, or property described above in said parish and state. I further certify that the property is duly recorded in the records of Vernon Parish, Louisiana, in the name of the parties above mentioned and property indexed.

Given under my hand and seal of office at Leesville, Vernon Parish, Louisiana, October 22, 1901.

W. A. WINFREE.

[Seal]

Dy. Clerk & Ex-officio Recorder.

Indorsed: U. S. vs. S. E. Bryers, et al. No. 380. Filed Mar. 1, 1909. Abstract of Title to Wright-Blodgett Company, Limited, from the Notarial and Abstract Office of J. J. Hicks, Leesville, La.

67

Law Office of Pujo & Moss,  
First National Bank Building, Ryan Street.

Arsene P. Pujo.

Clement D. Moss.

Lake Charles, La., December 23rd, 1901.

We hereby certify that we have carefully examined the foregoing abstract of title to the W. 1/2 of N. E. 1/4, S. E. 1/4 of N. E. 1/4 and N. W. 1/4 of S. E. 1/4 of Section 1, Township 1 South, Range 6 West; west half of N. W. 1/4 of Section 12, Township 1 South, Range 7 West; N. E. 1/4 of N. W. 1/4 of Section 10, Township 1 South, Range 7 West; S. 1/2 of N. E. 1/4 of Section 1, Township 1 South, Range 7 West; N. 1/2 of N. E. 1/4 of Section 34, Township 3 North, Range 5 West; S. E. 1/4 of N. E. 1/4, N. E. 1/4 of S. E. 1/4, of Section 10, Township 1 South, Range 7 West; S. 1/2 of N. W. 1/4 and S. 1/2 of of N. E. 1/4 of Section 2, Township 2 North, Range 5 West; S. 1/2 of S. E. 1/4 of Section 29, Township 1 North, Range 7 West; S.E. 1/4 of S.E. 1/4 of Section 33, Township 1 North, Range 7 West and 30 acres from the east side S. E. 1/4 of S. E. 1/4 of Section 35, Township 1 South, Range 7 West, in Vernon Parish, Louisiana, standing of record in the name of the Wright-Blodgett Company, Limited, and it is our opinion that the title thereto is good and valid, and that said property is legally vested in said company at this date.

We find that the abstract shows no title for the "five acres conveyed by George W. Johnson to said company in the southeast corner of the southeast quarter of the southwest quarter of Section 29, excepting and reserving about 14 acres for house," etc., but are informed that the company already owns said five acres by purchase from a former vendor.

Respectfully submitted,

PUJO & MOSS.

\* \* \* \* \*

69 United States Circuit Court, Fifth Circuit, Western  
District of Louisiana.

United States Government  
vs. No. 365.  
Samuel S. Akin, Jr., and The Wright-Blodgett Co., Ltd.

No. —. In Equity.

Testimony taken out of Court by order of Court before the Hon. Walter Jackson, clerk of said Court and special examiner, under appointment of the Hon. Alex. Boardman, Judge, of date May 30, 1907, at Lake Charles, La., on the — day of January, 1908.

E. P. Mills, Assistant United States District Attorney, for  
Complainant.  
Messrs. Mitchell & Young and Hall & Monroe, for Defendants.

70 Stenographer's Oath.

I, Fred W. Pulliam, hereby solemnly swear that I will faithfully and correctly take the testimony of all witnesses in the case of the United States vs. Samuel S. Akin, Jr., and the Wright-Blodgett Co., Ltd., taken at Lake Charles, La., this — day of January, 1908, and that I will file all documents offered in evidence and correctly transcribe the testimony of the witnesses and forward the same to the clerk of the United States Court at Shreveport, La., within twenty days from the date hereof.

.....  
Stenographer.

Inasmuch as the witnesses in this case who come to testify, some of them from a great distance and desire to return to their homes as soon as possible, it is agreed that they sign the stenographer's notes. The further signature upon their part is waived.

71 J. D. WILSON, being duly sworn, testified as follows:

Direct Examination.

By Mr. Miller:

Q. Mr. Wilson, do you know the location of the south half of the northwest quarter and the south half of the northeast quarter of Section 2, Town. 2 S., of Range 5 West, Louisiana meridian,—do you know where that land is?

A. Yes, sir.

Q. How far do you live from it?

A. Two miles, maybe a little farther.

Q. In what parish is this land?

A. Vernon.

Q. Did you reside where you do now during the years in 1899, 1900 and 1901?

A. No, sir; in 1901.

Q. Where did you reside in 1899?

A. I resided on Section 13, the same section about half a mile south of where I live now.

Q. What is your occupation?

A. I farm a little.

Q. What were you doing in 1899 and 1901?

A. I was working.

Q. During that time did you have any occasion to go upon this land I have described?

A. Yes, sir; once or twice during the year.

Q. What occasion.

A. Part of my stock would cross it and I was rounding them up.

Q. Who lived upon the land?

A. I never saw anyone living upon it.

Q. In 1899?

A. I never saw anyone living on it.

Q. Did you ever see anyone living on it in 1900?

A. No, sir.

Q. What improvements were made upon the land in 1900 or 1901?

A. Well, sir; there was a little fence upon I suppose. I could not tell, it might have been as [an] acre or a little more. I could not tell.

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Q. Was any crop planted?

A. I never saw any crop.

Q. Was there any house?

A. A little house; yes, sir.

Q. Where was that, what part of the land?

A. I do not know.

Q. What was the nature of this house?

A. A little log house made of pine logs, I suppose; it was of logs anyway. I do not know what size. It might have been 12x15, I do not know. These things did not interest me then.

Q. Did you ever see anyone living there?

A. I never did.

Q. Did you ever look inside of it?

A. I can't say that I ever did while he was holding it as a homestead.

Q. Did you know Samuel Akin, Jr.?

A. I doubt not—if ever met him I do not remember it.

Q. Do you know whether or not he was called Sylvester Akin?

A. I have heard him called that. I have heard that called Sylvester Akin's homestead.

Q. Do you know where Sylvester Akin lived?

A. No, sir; I do not remember.

(Objected to by Mr. Monroe on the ground that it is irrelevant, and not tending to prove or disprove any fact or allegation in the pleading of this case.)

Q. Have you ever known anyone to be living on that land?

A. When I passed through the land he might have been on it.

#### Cross-Examination.

By Mr. Monroe:

Q. You say you now live about two miles from this place and in 1900 and 1899 you lived about half a mile away?

A. Yes, sir.

Q. And as I understand you that you passed over this land about twice a year.

A. I might have passed over it more than that.

73

Q. It just happens that when you passed over you did not see anybody in the house and that is all you know about it?

A. Yes, sir.

(Signed) J. D. WILSON.

74 CHARLES M. INGALS, being duly sworn, testifies as follows:

Direct Examination.

By Mr. Mills:

Q. What is your name?

A. Charles Morton Ingalls.

Q. How old are you?

A. Sixty-two, going on sixty-three.

Q. Where do you live?

A. I live 4 miles or more south of Stilby Postoffice.

Q. In what parish?

A. I live in Vernon Parish.

Q. How long have you lived where you live now?

A. Since the fall of '83.

Q. What is your occupation?

A. Farmer.

Q. Do you know the location of the south half of the northwest quarter and the south half of the northeast quarter of Sec. 2, Town. 2 S., of Range 5, West Louisiana meridian?

A. Yes, sir; I know where it is, but I do not know just exactly how the lines run, but I know the locality of the country and it is about three miles of me.

Q. Did you ever have occasion during the years 1899 to go across or pass this land?

A. Yes, sir; I went over the Sylvester Akin homestead several times. There was a road went through there right down to the Leander postoffice and when I went down there horseback I went through there, and I go over with the wagon—

(By Mr. Monroe:

In so far as this testimony taken may be connecting the Samuel Akin homestead with the Sylvester Akin homestead is objected to as irrelevant, that issue not having been raised by the pleading.)

A. Yes, sir; there is also a Samuel Akin homestead there.

Q. Now the land I am asking you about is the land I described, that land you saw was known as the Sylvester Akin homestead?

A. That is what the people there called—

75 (Objected to by Mr. Monroe as irrelevant and leading.)

Q. It is what is known as the Sylvester Akin homestead?

Q. Do you know of your own knowledge that this land was homesteaded?

A. No, sir, I could not tell you of my own knowledge, but it has some 7, 8 or 9 years ago; six years anyhow.

Q. How often would you have occasion to go across this land?

A. Some times it would be a month or two or three months, and some times it would be three or four weeks.

Q. Was there any road that went through this land?

A. By the Sylvester Akin homestead; there was just a trail went through there.

Q. Was it close to any house?

A. Yes; there was a little old shack of a house there, a man lived there by the name of Anthony Burns.

Q. When did Burns live there?

A. He lived there before Akin homesteaded it. Just a little old cabin and it had gone to rack.

Q. Describe what kind of a house.

A. May be 12 or 14 feet, just a single wall to the house. To the best I remember, but a little old shack, it was a little log cabin.

Q. Did you ever know of any one living there since Burns left?

A. Yes, Bob White stopped there a week or so.

Q. When was that?

A. That was also before Akins homesteaded it.

Q. Do know has any one lived in that shack since 1899 or 1900?

A. No, sir; I do not think it was standing there.

Q. In the year 1899, 1900 and 1901 was there any cultivation on that land, any fence?

A. If there was I did not see it.

Q. Did you ever leave the trail and go over the land to view the land?

A. No, sir, only what I could see in riding through it.

Q. In riding through it could you see over it?

A. Yes, in the piney woods I could see two hundred yards on each side.

Q. Did you see any fence or crop, the cultivation of crops?

76 A. I never did.

Q. Where did Sylvester Akin live?

A. He lived down in the neighborhood of Hineston, below Hineston, some two or three miles. When he homesteaded in Rapides—

(Objected to by Mr. Monroe on the ground that the best evidence of a homestead is the homestead itself.)

Q. How far is Hineston from this land?

A. Well, six and three is nine miles, just as near as I can tell you by guessing.

Q. Is Sylvester Akin married?

A. Well, now, I couldn't tell you, sir.

Q. Do you know where he is now?

A. I could not tell.

Q. Do you know with whom he lived at Hineston?

A. I could not say. I know he lived down in there and that is all.

Q. Did you ever hear of, or see any other Akin living on this land?

A. I never did, not in my recollection.

Q. How close was this shack or house to the trail?

A. It was about twenty or thirty steps. The trail went to the south side of it.

Q. Was there anything to prevent you from seeing plainly from the road?

A. No, sir, it was open piney woods.

Q. Now, just state the appearance of this shack during the years of 1899, 1900 and 1901.

A. It must have been burned up. It disappeared from view. I did not see it any more for four or five years back. It was just a little building, no account for a residence of any kind.

Q. Do you know whether any clearing was ever made on the land or trees cut?

A. If there was I never did see it.

Q. Did you know Nat Wasey?



A. Yes, sir, I have seen him a few times.

By Mr. Monroe:

Mr. Ingalls, I want to caution you—

By Mr. Mills:

I object to that—

77 (At this point counsel for defendant requested the commissioner to instruct the witness that he is sworn to tell the truth, the whole truth and nothing but the truth, but that he will not be permitted to testify to matters which are not within his knowledge.)

(Mr. Mills, counsel for plaintiff, objected to any such instructions or warnings being given, for the reason that the special examiner under his appointment as such, has not authority to pass upon the competency or incompetency of testimony, and the counsel for defendants only right in the premises is to object and have the objection noted to any question or answer after it has been given, and that warning of any kind would be equivalent to a ruling upon the admissibility or inadmissibility of evidence.)

(By Mr. Jackson: The examiner understands that in swearing the witness to tell the truth, the whole truth and nothing but the truth he is inferentially directed to state nothing that is not within his own knowledge.)

Q. Did you know Nat Wasey?

A. I did not.

Q. Did you know him by sight?

A. I did at that time, but I do not know if I would know him now.

Q. About when did he come into that community?

A. It must have been some eight or nine years ago. I could not tell exactly.

Q. What was his occupation.

A. All that I know or heard of him doing—

(Objected to by Mr. Monroe on the ground that it is hear-

say and that only the best evidence is admissible and such facts as he may know himself, and not what he has been told.)

A. And as I know. No, I could not say.

Q. What was his occupation reputed to be?

(Mr. Monroe enters the same objection as above.)

Q. What was it understood in the neighborhood that his occupation was?

(Objected to by Mr. Monroe that it is hearsay of the rankest kind.)

A. Buying up homesteads, that is all I ever heard of him doing.

(Counsel for defendant here asked that this answer and question which elicited this answer be stricken out.)

(By the witness: I want to tell the truth. I do not know.)

Q. Do you know James M. Boyd?

A. Yes, sir, he lives in Leesville.

78 Q. Where did he live in 1899?

A. Well, about that time he left Sigler and moved to Cora. I do not know whether he lived at Sigler or at Cora.

Q. What was his occupation along in 1900 and 1901?

A. I am going to tell the truth. I was sworn to tell it and I am not going to tell anything else. His reputation—

Q. What was his business?

A. Buying land. Buying timber land.

Q. Do you know by whom he was employed?

A. I did not.

Q. Do you know whether or not he bought land for himself, or other parties?

(Objected to by Mr. Monroe on the ground that the only method of proving the buying of real estate in Louisiana is by written evidence.)

A. I do not know who he bought the land for.

71

Q. Do you know whether Samuel S. Akin, Jr., and Sylvester Akin were the same persons?

(Objected to on the ground that it does not tend to prove or disprove any allegations set forth in this case.)

A. Samuel Akin, Jr., or Sr.?

Q. Junior.

A. I did not know anything about any junior.

Q. There is an old man Sam Akin, isn't there?

A. Yes, sir.

Q. Do you know whether he has a son?

A. I do not.

Q. But you do know of Sylvester Akin?

A. Yes, sir.

#### Cross-Examination.

By Mr. Monroe:

Q. Mr. Mills described a tract of land to you and asked you if during the years of 1899 and 1901 if you had passed by it and you said you had passed by a trail that ran by the corner?

A. I do not know what it was; I simply know it was called the Sylvester Akin shack.

79 Q. And you had no occasion to go off the trail?

A. No, sir.

Q. And that land is pine wood?

A. Yes, sir, open pine wood.

Q. You passed along that trail every two or three months?

A. Yes, sir, sometimes it would be two or three months.

Q. You passed along that trail and at one point on that trail was an old house that some one told you was Sylvester Akin's homestead, and all you know is that some one told you that it was the Sylvester Akin homestead?

(By Monroe objected to all this evidence and asked that it be stricken out on the ground that it is hearsay.)

Q. You had no occasion to stop?

A. No, sir, I was not interested.

Q. It has been several years ago and your memory is not very good, is it?

A. No, sir.

Q. As I understand you to say, Burns lived on this land and Burns turned it over to Bob White?

A. White lived there about two or three weeks after Burns moved away.

Q. After Bob White lived there the house was evidently fit for habitation because White lived there, but eventually it burned up or was destroyed?

A. It must have been about two years or so after Akins homesteaded there.

Q. What did you say about planting?

A. I never saw anything growing on the land at all.

Q. But your observation only extended to both sides of the trail?

A. That is true.

By Mr. Young:

It is possible that this place that you think was Sylvester Akin homestead was not it at all—it is only what you heard people say.

A. I do not know.

80

Redirect Examination.

By Mr. Mills:

Q. I gave you the description of this land by numbers. State whether or not it is true that you know the approximate location of the land covered by these numbers,

A. I know right where the corner of the township is.

Q. Now, isn't it a fact that the land which about fits these numbers corresponds with the land known as the Sylvester Akin homestead?

A. Yes, sir.

Q. What is the nearest surveyors point that you can identify?

A. The Akins homestead is the township line.

Q. Do you mean the township line or the township corner?

A. I know where the township corner is and the township line goes right north of it east and west.

Q. You say this land is open pine wood?

A. Yes, sir.

Q. About how much of this land at the place where this shack was could you look over and see over from your horse on this trail?

(Objected to by Mr. Monroe as leading.)

A. Well, about two hundred yards on each side.

(Signed) C. M. INGALLS.

81 F. M. INGALLS being duly sworn testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. Francis Marion Ingalls.

Q. How old are you?

A. Forty years.

Q. Where do you reside at present?

A. At Leesville.

Q. How long have been living there?

A. Since April of last year.

Q. Where did you live during the years 1899, 1900 and 1901?

A. During the years 1899 and 1900 I lived on Sec. 22, Town 3, North of Range 5 West. That was during 1899 and 1900.

Q. Where did you live in 1901?

A. Sec. 26-3-15.

Q. What is your occupation?

A. I was a farmer and run a farm.

Q. Now, Mr. Ingalls, do you know the location of the south half of the northwest quarter and the south half of the northeast quarter of Sec. 2, T. 2, north of Range 5 west, Louisiana Meridian?

A. Yes, sir.

Q. How far from that land did you live in 1899 and 1900?

A. I suppose it must have been in 1899 and 1900, three or four miles.

- Q. In 1901 how far?
- A. About a mile and a half.
- Q. During those years did you ever have occasion to go to that land?
- A. I was close to the land.
- Q. About how often would you go across it?
- A. Probably not so often. I might have averaged it—I could not say.
- Q. What was the nature of that land?
- A. It was what was termed agricultural land.
- Q. Was it covered with woods or clear?
- A. It was the most of it in the woods.
- Q. What kind of woods?
- A. Pine woods.
- Q. Was there any house or any building upon that land in 1899, or during the years mentioned?
- A. Yes, sir, I think so.
- Q. What kind of a house?
- A. I never examined the house closely—there was a house there. It seems the house was put up for a residence and was occupied once.
- Q. Was that before 1899?
- A. Yes, sir.
- Q. What was the appearance of the house?
- A. I think it was a log house.
- Q. How big?
- A. I think it must have been sixteen feet square. It has been some time and I do not remember.
- Q. Did you see or know anyone living in that house during the years I have mentioned?
- A. No, sir, I do not. I have a recollection of seeing some one there once as I passed by. I think it was some one working about the place.
- Q. Do you remember who it was?
- A. No, sir.
- Q. What were they doing?
- A. They seemed to be doing some kind of work. I do not remember, except that I saw some one there.
- Q. Was that the only time that you ever saw any one there?
- A. Yes, sir.
- Q. Did you ever go up to the house?

A. Yes, sir, I rode by the house one time.

Q. Did you look into it?

A. I did not.

Q. Was this property cultivated at all?

A. I never saw any of it cultivated.

Q. If it had been cultivated you could have seen it?

A. Yes, sir, I could have seen it where I traveled.

83 Q. The land was open pine woods, was it not?

A. Yes, sir, it was open—that is a great share of the land was open pine woods.

Q. How much of the land have you viewed in the times you have passed over it?

A. Well, I will tell you, the road run through west forty of the homestead and I generally traveled that road and that is all of the land I saw.

Q. How far could you see from the road?

A. Several hundred yards—two or three hundred yards, I suppose.

Q. When did you say you moved to Leesville?

A. In April, 1901.

Q. Up to the time you moved to Leesville, did you ever see or know of any one living on the land?

A. I did not know of any one living on it.

Q. Did you know Samuel Akin, Jr.?

A. No, sir.

Q. Do you know a party named Sylvester Akin?

A. No, sir.

Q. You say you do not know any one named Sylvester Akin?

A. No, sir, I was not acquainted with him.

Q. Do you know him by sight?

A. No, sir, I do not think I would.

#### Cross-Examination.

By Mr. Monroe:

G. As I understand your testimony you testified that once every month or two you went along that road that goes through the west forty, and whatever you know about this land is what you saw as you passed along, and you know absolutely nothing about this land except as you could see it from that road?

A. No, sir.

Q. And you went by this house during the years mentioned only once, at which time you were on horseback and did not stop and look inside?

A. No, sir; I did not.

Q. And one time you saw some one working there?

A. Yes, sir, I think it was during those years—I am not quite sure it was during the life of the homestead.

84 Q. This tract of land lies out there in the pine woods, and one strip of pine woods looks just like another, and there is nothing to identify this land as any particular section, and the only way that you can identify this land is by what you have been told, isn't it? You have been told that it was the Akin cabin and that is the only way that you know it?

A. Yes, sir.

(By Mr. Monroe:

Then I object to all this line of testimony and ask that it be stricken out on account of hearsay.)

Q. You have no other means of identifying this tract?

A. I would know that that was the south half of the north-east quarter of Section 2.

Q. How do you know?

A. By the subdivision corners?

Q. Where was the subdivision corners?

A. The best that I remember, now I have not been at the corner since the time the homestead was made. It was standing west and a little south, about a hundred yards from the house. It was a little west and south.

Q. How did you know that was not the north half.

A. Because I run the lines.

Q. Are you a surveyor?

A. No, sir.

Q. Have ever studied surveying?

A. No, sir.

Q. What did you do, step it off?

A. Yes, sir.

Q. From what point did you start?

A. I started from the northwest corner of Section 2.

Q. How did you identify the corner?

A. The section line could be traced at that time better



than now. I took the line and run it down to the northwest corner of Section 2 and then run south along the line to the southwest corner of Section 2.

Q. Where did you start, at a point which you could identify?

A. At the northwest corner of Section 2.

Q. Was that a point you could identify?

85

A. Yes, sir, there was a section corner. I could not say positively that the bearing trees were marked.

Q. You had a general idea how that township line ran and you stepped it off from the township line south?

A. Yes, I had a general idea.

Q. How far south from the township line did you come?

A. One mile. I commenced at the northwest corner of Section 2 and run south to the southwest corner of Section 2, and I remember of running this line through there. It has been so long ago that I do not remember very much about it.

Q. That is the only line you ran in that neighborhood?

A. No, sir.

Q. What other line did you run in that neighborhood?

A. Well, I could not tell you how many lines. I have been through there several times running these lines and I have been out with other parties.

Q. How long did that log house remain there?

A. I do not know, sir.

Q. You do not recollect when it was removed?

A. No, sir, I do not remember.

Q. You did not pay any particular attention to it as you passed along the road?

Q. [A.] No, sir, I never paid any particular attention to it.

Q. How far back from the trail was it?

Q. [A.] About fifty yards from the house. From the main road that house must have stood one hundred and fifty yards.

(Signed) F. M. INGALLS.

ALLAN A. CARRUTH, being first duly sworn,  
testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. Allan A. Carruth.

Q. Where do you live?

A. I live in Vernon Parish.

Q. How long have you lived there?

A. I have been living there eighteen or nineteen years.

Q. What is your occupation?

A. Farming.

Q. Do you know the location of the south half of the north-west quarter and the south half of the northeast quarter, Section 2, Town. 2, Range 5 West, Louisiana Meridian?

A. Yes, sir.

Q. You know definitely?

A. Yes, sir.

Q. How far do you live from this land?

A. Well, I live right close to there, about two miles.

Q. During the years 1899, 1900 and 1901, did you live where you do now?

A. Yes, sir.

Q. Did you have any occasion during those years to go over or to cross this land?

A. Yes, sir.

Q. About how often?

A. Some times every week, and again it would be three or four weeks.

Q. Did any one live upon that land during those years?

A. No, sir.

Q. Was there any house or other improvement?

A. Yes, sir, a little house.

Q. Just describe the house.

A. It was just a little log house.

Q. Did you see the inside of it?

A. Yes, sir.

87 Q. How was it furnished?

A. There was no furniture in it.

Q. Any bed in the house?

- A. No, sir.
- Q. Any stove?
- A. No, sir.
- Q. Cooking utensils?
- A. No, sir.
- Q. Do you know who built this house?
- A. A man by the name of Burns.
- Q. When did he build it?
- A. I don't know.
- Q. Was it before or after 1899?
- A. It was before.
- Q. Was he living in the house in 1899?
- A. No, sir.
- Q. How long prior to that had he left the place?
- A. I do not know, it had been a good while.
- Q. Just approximate it, how many years?
- A. Well, I do not know, it has been several years.
- Q. During the years 1899, 1900 and 1901, were there any improvements, was any part of the land cultivated?
- A. Yes, sir.
- Q. How much?
- A. Well, I reckon about half an acre.
- Q. When was it put in cultivation?
- A. Some time the year Akin made his homestead.
- Q. Was any crops planted?
- A. Yes, sir.
- Q. What did he plant?
- A. Well, he planted some peas, I do not know whether anything else or not.
- Q. Do you know whether he harvested any crop?
- A. No, sir.
- 88 Q. Was any person on this half the next year?
- A. I do not remember.
- Q. In 1901 was any person there, or any crop raised on this place?
- A. I do not think there was.
- Q. Do you know Samuel S. Akin, Jr.?
- A. Yes, sir.
- Q. Was that the only name he was known by?

(Objected to by Mr. Monroe for the reasons heretofore stated.)

A. He was known by the name of Sylvester Akin.

Q. Do you know why he was called Sylvester Akin?

A. No, sir.

Q. Do you know whether or not that is his middle name?

A. No, sir.

Q. Then you know that Sylvester Akin and Samuel S. Akin, Jr., are the same person?

A. Yes, sir. I never knew what his name was until he made the homestead, and that was the name he made it in.

Q. Do you know whether this land that I have described was ever homesteaded?

(Objected to by Mr. Monroe because it is not the best evidence.)

A. Sylvester Akin homesteaded it.

Q. When?

A. I do not know.

Q. About what year?

A. I believe it was 1899.

Q. Did you have anything to do with the filing of his papers or being a witness in his case with regard to his homestead?

A. I was a witness.

Q. To what?

A. To the proving up.

Q. When did he prove up?

A. I do not remember.

Q. About when?

A. I could not state exactly. I never took no date down.

Q. About what year?

89 A. I believe it was in 1901.

Q. Before whom did you testify?

A. James M. Boyd.

Q. At what place did you testify?

A. At Cora.

Q. Do you remember what statements you made as a witness?

A. No, sir, I do not.

Q. Did you testify as to whether or not Akin had established a homestead on the land?

(By Mr. Monroe :

I object to any testimony as to the contents of the affidavit on the ground that the affidavit itself is the best evidence of its contents.)

A. I do not think I did.

Q. Do you remember definitely what testimony you gave at that time?

A. No, sir, I do not.

By Mr. Monroe :

It is understood that this entire line of testimony shall be subject to the same objection as made before.

Q. Mr. Carruth, I have you a certified copy of the affidavit as made out and executed before James M. Boyd, and marked "P. Akin, Jr., 20."

(Mr. Monroe asked what was the purpose of that offering. Mr. Mills said that it was not necessary to state it. Mr. Monroe objected to the offering as irrelevant.)

Q. Can you read?

A. A little, not very much.

Q. Well, see if you can read it?

A. It will take me a long time.

Q. Mr. Carruth I will ask you whether or not you stated at the time you testified before Mr. Boyd that you were well acquainted with Samuel S. Akin.

A. Yes, sir.

Q. Did you state that he had entirely established actual residence on this land?

(Mr. Monroe objected on the ground that the affidavit itself is the definite evidence and its contents shall apply.)

A. I do not think I did.

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Q. Did you state that he and his family had lived continuously on the land since first establishing their residence there?

A. No, sir, I did not.

A. Did you state that since the 4th of May, 1899, he had not been absent from the land?

A. No, sir.

Q. Did you state that you thought he was acting in perfect good faith in making that entry?

A. No, sir.

Q. Where does Samuel S. Akin, Jr., live at this time?

A. He lived away down on the bottom.

Q. How far is that from this land in question?

A. Well, I do not know—away down on the bayou.

Q. About how far?

A. May be forty or fifty miles.

Q. Was he married at the time, in the years I have mentioned?

A. Yes, sir; but I was not acquainted with her, never did see her.

Q. Do you know with whom he lived on the bayou?

A. No, sir.

Q. Did you know James M. Boyd at that time?

A. Yes, sir.

Q. Where did he live?

A. He lived near Sigler post-office, I believe.

(At this point counsel for defendant made the following request of the Examiner: "Counsel for defendant requests the Examiner to charge this witness that he is permitted under the law to testify only to such facts as he may know of his own personal knowledge, and that he is not to testify in regard to any fact which he may have been told or what he may know only by hearsay evidence)."

(By Mr. Jackson, Special Examiner:

"If there is no objection I am perfectly willing.")

(Counsel for plaintiff objects to any instructions being given by the Examiner, for the reason that the Examiner has no authority under his appointment to pass upon the competency or incompetency of testimony, and that an instruction will be equivalent to a ruling upon the admissibility of evidence and that the remedy of defendant in the premises is by proper objection noted in the testimony).

91 (By Mr. Jackson:

For the reason stated by counsel for plaintiff the Examiner declines to so instruct the witness.")

Q. What was James Boyd's occupation?

A. Commissioner and working at land matters.

Q. What do you mean by land matters?

A. Well, he was working—claimed to be working for the people.

Q. What people?

(Mr. Monroe objected to that, on the ground that it can be nothing but the expression of Mr. Boyd and hence not the best evidence).

Q. Who did he claim to be working for?

A. He claimed to be working for the people who homesteaded lands. I do not know who he was working for.

Q. What people do you refer to when you say, "people who homesteaded lands?"

A. The country people who were making homesteads.

Q. Do you know whether James M. Boyd made any examination of this land?

A. No, sir; I did not.

#### Cross-Examination.

By Mr. Monroe:

Q. Did you have any conversation with any one relative to the testimony that you were to give or are now giving in this case?

A. No, sir.

Q. You never have talked to anybody about this testimony?

A. Nothing, only just us witnesses coming down, we were just talking, we did not know what we were summoned for.

Q. Did you ever talk to the government special agent in regard to the matter?

A. Not that I know of.

Q. Did you ever talk to Mr. Coleman in regard to the matter?

A. Yes, sir.

Q. You made an affidavit?

A. Yes, sir.

Q. Then, what did you mean when you say "you haven't talked to him?"

A. I did not know what you meant.

Q. You knew he was a special agent when you talked to him?

A. I knew he was a government man.

Q. You talked with him in regard to this case?

A. Yes, sir.

92 Q. You told him you would testify in this case?

A. Yes, sir.

Q. And you made the affidavit?

A. Yes, sir.

Q. Now, what did Mr. Coleman tell you he would do if you would testify in this case?

A. I do not remember what he did tell me.

Q. You do not remember?

A. No, sir.

Q. Are you prepared to sit there and swear that you do not remember what Mr. Coleman told you he would do if you would come and testify? Now, you are under oath and if you do not tell the truth you are committing perjury. Do you remember what Coleman told you he would do if you would come here and testify in this case?

A. Mr. Coleman told me I would not have to come.

Q. Did Mr. Coleman tell you anything about an indictment for perjury?

A. I do not think so.

Q. Did Mr. Coleman tell you anything about a prosecution of yourself for perjury?

A. No, sir.

Q. Did any government agent tell you about it?

A. I do not think.

Q. You have been indicted for perjury?

A. Yes, sir.

Q. Not in connection with this case, but another one?

A. Yes, sir.

Q. When did you have this conversation with Mr. Coleman?

A. I do not remember—about two years ago.

Q. What did he say to you?

A. I cannot remember.

Q. What did you say to him?

A. I do not know now what I said to him.



- 93 Q. Where was this conversation?
- A. At my place.
- Q. Your place is at Section 12 of 2-5?
- A. Yes, sir.
- Q. He came to your place?
- A. Yes, sir.
- Q. How did the conversation arise?
- A. Well, he just drove up there and commenced talking to me and asked me about the land.
- Q. What did you tell him?
- A. Well, I couldn't remember what I did tell him. I told him the man went there and made application for the homestead.
- Q. And you told him that the man lived on the place?
- A. No, sir.
- Q. What did you tell him?
- A. I do not remember.
- Q. What else did he ask you?
- A. I do not remember what he asked me.
- Q. Didn't he tell you that he was not after you, that that would be all right?
- A. Yes, sir.
- Q. And that he would see to it that the government didn't do anything to you?
- A. Yes, sir.
- Q. And if you would make that affidavit for him, that it would be all right as to you and that you need not be afraid?
- A. Yes, sir.
- Q. And it was because he told you that that you made the affidavit?
- A. Well, of course, I thought I was telling the truth when I made the affidavit.
- Q. Didn't he tell you that if you didn't make the affidavit that the government was going to prosecute you?
- A. No, sir.
- Q. Have you had any trouble with Akin, Jr.?
- A. No, sir.
- Q. Are you on good terms with him?
- A. Yes, sir.
- Q. How long has it been since you have seen him?
- 94 A. Not since he proved up his homestead, he still lives down on the bayou, I reckon.

Q. How many times have you been indicted?

A. Once.

Q. Have you ever been into any other trouble up there besides that indictment for perjury?

A. No, sir.

Q. Have you ever testified in any of these government cases before?

A. Only in the land office.

Q. I mean in any other case besides this one in United States Court or land office?

A. Yes, sir; I have in the land office.

Q. You mean you testified for the government?

A. I reckon I testified for the homesteaders.

Q. Have you ever testified in the court before?

A. No, sir.

Q. Now, you said Mr. Burns built that house on there, how do you know, he told you so?

A. Yes, sir.

(Mr. Monroe objected to all evidence on that subject on the ground of hearsay and asked that it be stricken out.)

Q. How long did Mr. Burns live in that house?

A. I do not know.

Q. After Burns left it who moved into it?

A. His brother, I believe, moved in and lived there a short while after he left.

Q. Who else moved in there after he left?

A. No one. Not that I know.

Q. Do you know Bob White?

A. Yes, sir.

Q. Did he ever live in that house?

A. If he did I do not remember it.

95 Q. When was it you had this conversation with Mr. Coleman and made this affidavit?

A. Well, I do not know when it was.

Q. It was while you was under indictment for perjury, wasn't it?

A. I do not think it was.

Q. You said it was about one and a half or two years ago?

A. I said about two years ago.

Q. When were you indicted?

A. About a year ago.

Q. Wasn't it longer than that?

A. I do not know.

Q. Then as I understand it, at the time—a little before the time you were indicted for perjury in another case Mr. Coleman came out there and told you that if you would make this affidavit and give this testimony to him that that would be all right, and you need not be afraid?

A. Yes, sir.

### Redirect Examination.

By Mr. Mills:

Q. State just what Mr. Coleman did say to you?

A. I cannot remember it, I do not remember how he talked.

Q. What was in general the effect of what he said—what meaning did it convey to you—what impression did it make upon you?

A. It caused me to think that the homesteaders were beating the government out of the land.

Q. What did he ask you to do?

A. He asked me to make the affidavit.

Q. Did he tell you what he wanted you to say, or did he simply tell you to tell the truth?

A. He told me to tell the truth, that he would help me answer.

Q. The testimony that you have given here is the truth about the matter?

(Objected to by Mr. Monroe as leading.)

Q. Is what you testified here this morning the truth or not the truth?

A. It is the truth as far as I am able to remember.

(Signed) ALLAN A. CARRUTH.

96 C. G. COLEMAN, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. C. G. Coleman.

Q. Are you connected with the government in any way?

A. Yes, sir; I am special agent of the general land office.

Q. How long have you been in that position?

A. At different times since 1887.

Q. How long have you been in that position since you were last appointed?

A. Since Feb., 1906.

Q. Did you make an investigation of the Samuel S. Akin entry in Vernon Parish?

A. Yes, sir; on the 24th day of May, 1906.

(By Mr. Monroe:)

Q. Were those notes in your handwriting?

A. Yes, sir.

Q. When did you make them?

A. At the time.

(Mr. Mills:)

Q. Did you have any conversation with Allan A. Carruth at the time about that entry?

A. Yes, sir.

Q. Did you offer Carruth any inducements to give his testimony in the matter?

A. I did not.

Q. What statement did you make to him?

A. That I was a special agent of the general land office and was there for the purpose of examining this entry and asked him what he knew about it?

Q. Did you say anything to him with regard to any inducement to testify?

A. No, sir; I did not know at that time that he was under indictment.

Q. Did Carruth make any affidavit before you as to the facts in the case?

A. Yes, sir.

97 Q. How did he come to make that affidavit?

A. After I had questioned him I asked him if he was willing to make affidavit to the facts as he had given them, and he said he was, and I took the affidavit.

Q. Did you make any inducements if he would make this affidavit?

A. I did not.

### Cross-Examination.

By Mr. Monroe:

Q. How long have you been with the government?

A. I have been in government service since 1888.

Q. Continuously?

A. No, sir; there have been intervals when public administration changed I generally stepped down and out and got some other position?

Q. Where are you from?

A. From Virginia—my present home is in Richmond. My family lived in Louisa County.

Q. What did you do when you first grew up?

A. I had a little spat with some people who lived on the north side of us.

Q. What was the nature of it?

A. They called it the rebellion.

Q. When you came back from the army what did you do?

A. I farmed and practiced medicine for awhile in Louisa County.

Q. How long did you live there?

A. Most of the time until 1880.

Q. What did you do in 1880?

A. I went to Washington.

Q. In what service?

A. By appointment in the Census Bureau.

Q. Under what administration?

A. Hays administration.

Q. How long did you remain there?

A. Four or five months.

Q. Where did you go then?

98 A. I was appointed topographical engineer on the C. & O. Railroad.

Q. How long did you remain with the C. & O.?

A. Until August, 1881.

Q. Where did you go then?

A. Went then up on the Georgia Pacific Railroad as engineer.

Q. How did you happen to leave the C. & O.?

A. I completed the work I was on.

Q. Then you went upon the Georgia Pacific Railroad as engineer?

Q. [A.] Yes, sir.

Q. How long did you remain there?

A. Three months.

Q. How did you happen to leave there?

A. Got an appointment on the United States Engineering Corps under Arthur's administration.

Q. How long did you remain there?

A. Until the spring of 1885.

Q. How did you happen to leave the engineering corps?

A. Failure to make any appropriation for rivers and harbors.

Q. What did you do then?

A. Went out to New Mexico.

Q. What did you do out there?

A. Contracts for conveying public lands with the United States government.

Q. How long did you remain there?

A. I completed the contract I was on and was paid for it in January, 1887.

Q. Have any trouble with the government over it?

A. No, sir.

Q. What did you do then?

A. In 1887 I was appointed special agent in the general land office under Cleveland's first administration.

Q. Been there ever since?

A. No, sir.

Q. When did you go out?

99 A. September 1st, 1889.

Q. That was when Harrison came in?

A. Yes, sir.

Q. When did you go in again?

A. In August, 1893, in the second Cleveland administration.

Q. How long did you remain?

A. Until the end of Cleveland's administration in 1897.

Q. How long did you remain out?

A. I think it was sometime that year I was appointed special agent of the Department of Justice and assigned to duty with the United States Court of Private Land Claims—wait a minute, I think that is all wrong—I got that appointment in 1898. I remained with them until the 30th of June, 1904.

Q. What did you do after that?

A. Nothing—that is, no government service until I was appointed by executive order of Roosevelt in February, 1906.

Q. Have you changed your politics?

A. Not a bit, I am still a Democrat.

Q. How did you happen to leave the Department of Justice?

A. I left on the account of the private land claims expiring.

Q. Since 1905 you have occupied your present position?

A. No, sir; since 1906.

Q. When was it that you had your interview with Mr. Carruth?

A. I had I think one or two with him after he gave the affidavit, but I have not got any record of it. I know I was at his house and I stayed all night, but I do not remember how long ago it was and I do not remember that we talked on this second occasion about this claim.

Q. What was the date of your first visit?

A. I have already given that—May 24th, 1906.

Q. What do the duties of your present office consist of?

A. Well, they seem to be a little various just now. I am at present engaged in examining the land alleged to be swamp land in Florida.

Q. Where were you in 1896?

A. I examined and investigated alleged fraudulent claims.

100

Q. How many?

A. I haven't the least idea. I haven't any idea.

Q. Five hundred?

A. I could not tell to save my life—about that many.

Q. How many witnesses did you examine in each claim?

A. None—practically none. Sometimes I was not able to get any witnesses, and sometimes I got half a dozen.

Q. You generally got three or four?

A. O well, when I got two I was generally satisfied.

Q. What kind of a memory have you got?

A. Well, that is pretty hard, my memory is not as good as it has been.

Q. How old are you?

A. Sixty-four.

Q. I want to ask you something. Do you think you can remember what you said to 1,000 or 1,500 men several years ago?

A. Not in every case.

Q. Now supposing a man is under indictment and scared to death, you think he is liable to remember what you said?

A. I was very well satisfied with the manner in which Mr. Carruth testified, and the straightforward way in which he did it.

(Counsel for defense asked that the answer be stricken out because it is not responsive, and asked that the question be re-read to the witness.)

Counsel for plaintiff objects to the answer being stricken out for the reason that it is responsive in that it contradicts and answers the question propounded as to Allen Carruth being scared to death at the time of his conversation with the witness.

A. I do not know whether he would be liable to remember, but it would not make any difference with me. It would rather impress it on my memory.

Q. Have you any distinct recollection of what you said?

A. Yes, sir.

Q. Could you repeat the words you used?

A. No, sir.

Q. You are a government special agent?

101 A. Yes, sir.

Q. How were you reimbursed for services?

A. By salary.

Q. You have no pecuniary interest in this case?

A. None at all.

Q. Any friend of yours got a pecuniary interest in it?

A. I do not think any friend of mine has any interest in this claim. That is a hard question to answer. I know a great many people, but whether they are friends of mine or not I do not know. (Signed) CLAYTON G. COLEMAN.



102            ALLAN A. CARRUTH, being recalled and duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. Can you read?

A. I can read a little. I can sort of sign my name.

Q. Can you do any more than sign your name?

A. I can read a little.

(Objected to by Mr. Monroe on the ground that it is irrelevant for the reason that it does not tend to prove or disprove any facts or allegations at issue in the case.)

Q. Can you read?

A. I can read a little.

Q. Now when you made affidavit and testified as a witness for Samuel S. Akin, Jr., before James M. Boyd did you read your answer to these question?

A. No, sir.

Q. Who wrote them down?

A. James M. Boyd.

Q. Did you read them after he wrote them down?

A. No, sir.

Q. Did you read the question in the form for your affidavit, or did you merely answer what Mr. Boyd asked?

A. I just answered what he asked.

Cross-Examination.

By Mr. Monroe:

Q. As I understand it he asked the questions and you wrote them down?

A. Yes, sir.

103 W. A. WINFREE, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your name?

A. William Alfred Winfree.

Q. How old are you?

A. Forty-four years according to the family record.

Q. What is your place of residence?

A. My postoffice is Hawthorne.

Q. How long have you lived there?

A. I have been there steady for between ten and twenty years. I was raised there on the old place below me. One year I lived in Lake Charles.

Q. What was your occupation in 1898?

A. I was at work in the sheriff's office in Vernon Parish at Leesville.

Q. What was your occupation in 1899?

A. I was still at work there in the sheriff's office.

Q. What was your occupation in 1900?

A. I went to work in the clerk's office sometime in the spring.

Q. In what capacity?

A. Deputy clerk.

Q. Who was clerk at that time?

A. J. J. Hicks—was elected in 1900.

Q. Where did you work in 1901?

A. In the clerk's office.

Q. Where did you work in 1902?

A. In the clerk's office—and part of 1903 is my recollection.

Q. Did you know Nat Wasey?

A. Yes, sir.

Q. When did you first see him?

A. I do not remember, but I think sometime in 1898, and on then for several years.

Q. Do you remember just when he left?

A. No, sir; I do not.

104 Q. During the time you were employed in the clerk's office how often would you see Nat Wasey in the office?

A. He had no regular time that I know of to visit Leesville. I would sometimes see him there once a week, and from then I would not see him for possibly two months.

Q. What business would he have in the clerk's office?

A. He usually would bring deeds and file certificates and make affidavit before the clerk sometimes, and then would bring matters for the Wright-Blodgett Co., Ltd., and then he would instruct whatever instructions he wanted to give concerning them.

Q. What instructions would he give?

A. Sometimes one, sometimes another, is my recollection.

Q. By whom was the clerk's office paid for matter and papers filed by Mr. Wasey?

A. By the Wright-Blodgett people.

Q. To whom would the clerk's office send their bills for these papers?

A. My recollection is all the deeds that were ever filed there and recorded for the Wright-Blodgett people were sent to them at Lake Charles and they would return a check covering the fee bill.

Q. Do you remember how these checks were signed?

A. I do not. It was in payment for the deeds that were recorded for the Wright-Blodgett people. I think most of the time they were signed by Mr. Kelly or Mr. Dickens, probably all the time.

Q. Did Mr. Wasey ever make any statement to you as to who he was employed by?

(Objected to on the ground that it is hearsay and is as admission beyond the authority of the agent.)

A. As I stated a while ago I do not remember the exact language that he used, but he told me he was representing the Wright-Blodgett people who had an office at Lake Charles here, which I think was the first statement that he ever told me, and then gave me his instructions.

105 (It was understood that the same objection apply without repetition to this entire line of testimony.)

Q. During the time Nat Wasey was having the deeds filed and certificates and other papers filed in the clerk's office at

Leesville did he ever give you any other instructions in regard to these papers about sending them to any other party than the Wright-Blodgett Company?

A. I do not think he did—that is matters that belong to the Wright-Blodgett people.

Q. Did he ever file other papers?

A. I do not remember, I presume he did. I presume sometime other people would send deeds by Mr. Wasey.

#### Cross-Examination.

By Mr. Monroe:

Q. My understanding of your testimony is that you are not prepared to swear that any of these conversations or transactions with Mr. Wasey took place prior to the year 1901?

A. No, sir; I do not remember what time Mr. Wasey ever told me what he was doing.

Q. What time was it he had that conversation with you and told you about his employment?

A. As well as I remember it was about the first time I saw him after I had seen him in Lake Charles several years before. When I saw him there I asked him what he was doing there.

Q. As I understood your testimony you are not prepared to swear that any payment was ever made for any recordation of anything else by a check signed by the Wright-Blodgett Company?

A. I do not remember. The checks would be returned signed, that is, the check covering the fee bill. The checks were good and any bill that was sent to the Wright Blodgett Company was paid that I have any knowledge of. I do not think Mr. Wasey ever paid a bill, though I do not recollect.

Q. Mr. Wasey recorded deeds for other people beside Wright-Blodgett.

A. I would not say positively. He might have,  
106 I really presume he did, but I do not recollect a single one that he ever carried there.

Q. I believe I asked you a while ago and you told me that you had never asked Mr. Wasey who he was employed by?

A. I do not know as I ever came out and asked him the whole particulars; when I first saw him I asked him what he was doing there, but I don't know in what kind of language

or anything else, but I took it for granted that he was doing what he said and by his bringing these papers that that was what he was doing. I did not know anything about what he was doing or did not care further than I was just helling with him as a fellow will do when you have not met a man for a year or two.

Q. You say you do not remember just what Mr. Wasey told you then and do not remember just what he did tell you. Are you sure it was Mr. Wasey, or maybe it was somebody else?

A. No, sir; I remember asking Nat Wasey when he began to come up there what he was doing, I was not concerned and had no interest in what he was doing. I just asked him and a person would naturally have to draw upon his imagination in order to remember all about it.

(Signed) W. A. WINFREE.

(The same agreement was made between the attorneys on both sides as with the testimony of John Johnson with reference to all but the Hicks case.)

107 JOHN JOHNSON, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. John Johnson.

Q. Where do you live?

A. In Vernon Parish, Fifth Ward, near Craven P. O.

Q. How far is that from Leesville?

A. About 25 miles.

Q. How long have you lived there?

A. I think I have been there sixteen years last fall.

Q. About how old are you?

A. I will be thirty-five years old Monday next.

Q. Did you ever know a man named Nat Wasey?

A. Yes, sir; I know him, or did.

Q. When did he first come into that country?

A. I could not tell you how long it has been.

Q. About how long?

A. He was there along about seven years ago—he was there, I am pretty sure. I could not say positively, but that is my recollection.

Q. Did you ever have any dealings with him?

A. I sold him a piece of land while he was there.

Q. What kind of land?

(Objected to by Mr. Monroe as irrelevant.)

Q. What kind of land was this you sold him?

A. It was timber land.

Q. What kind of timber?

A. Part of it was good heavy open and part of it was along a little creek—a swamp with a creek on the edge.

Q. Did Mr. Wasey make any statement to you as to for whom he was purchasing this land?

(Objected to by Mr. Monroe on the ground that it is hearsay or if it is to be construed as an admission by an agent it is beyond the scope of his authority.)

108 A. I think he told me he was buying for the Wright-Blodgett people.

Q. Do you just think that or are you sure?

A. Well, I would not be sure, but I think he told me he did.

Q. Do you remember to whom the deed was made?

(Objected to by Mr. Monroe on the ground that the deed is the best evidence.)

Q. Well, I would hate to say positively that I do know, but I returned my deed. I never had it recorded to Mr. Wasey and told him to make his deed and have recorded and I could not tell you whether it was to him or the Wright-Blodgett people. I could not positively say.

Q. Do you know of any other land that Mr. Wasey bought in that neighborhood?

Q. [A.] No, I could not said [say] that I know that he did buy any, but I was told that he bought some.

Q. Never mind what you heard about it.

Q. Have you ever been indicted?

A. Yes, sir; I reckon so.

Q. What have you been indicted for?

A. I was indicted for getting a row with an old gentleman at his place long years ago, but I was nothing but a boy like.

Q. On what charge?

A. For swearing and cursing and using obscene language near a residence.

Q. Were you ever arrested on any other charge?

A. No, sir.

(Dictated by Mr. Mills:)

It is agreed between counsel for both sides that the above testimony of John Johnson is to be added to each one of the cases covered by this submission except, 385, the United States of America vs. Henry L. Hogan, et al., and in that agreement it is understood that the signature of this testimony is waived in all the cases except the present.

his  
(Signed) JOHN X JOHNSON.  
mark

I attest to this signature.

FRED W. PULLIAM, Stenographer.

109 JAMES A. HEARD, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. James A. Heard.

Q. How old are you?

A. Thirty-seven.

Q. Where do you live?

A. At Slabtown, Vernon Parish.

Q. How long have you lived there?

A. Since 1891.

Q. What is your occupation?

A. Farming.

Q. Did you live there in 1899, 1900 and 1901?

A. Yes, sir.

Q. Did you know at that time a man named Nat Wasey?

A. I did.

Q. Where did he live?

A. Brushy Creek.

Q. How far from you?

A. Eight miles.

Q. What was his occupation at that time?

(Counsel for defendant requests the examiner to charge this witness that in this testimony that he is to testify not as to anything he may have heard or been told, but exclusively as to things which have come within his own personal knowledge.)

Counsel for plaintiff objects to any instructions being given by the examiner for the reason that under the order of reference the examiner has no authority to pass upon a competency on [or] incompetency of evidence and that such an instruction would be equivalent to passing upon the competency or incompetency of evidence.

By Mr. Jackson, Special Examiner:

The request is refused for the reason given by the counsel for the government.

Q. What was his occupation in 1899, 1900 and 1901?

A. He was buying timber.

Q. How do you know that?

A. By seeing what he was doing.

110 Q. You know that then of your own personal knowledge?

A. I do.

Q. Saw him buying for himself or someone else?

A. For the Wright-Blodgett Company.

Q. How do you know that?

A. The deed was transferred.

Q. Do you know that of your own personal knowledge?

A. I do.

Mr. Monroe objects to the last answer on the grounds that it is not the best evidence.

(Signed) JAMES A. HEARD.



(It is agreed that the above testimony of the witness in regard to Nat Wasey is to be incorporated in the transcript of the testimony of all the cases except those of William Hester and Krause & Mangham.)

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111      In United States Circuit Court, 5th Circuit, Western  
District of Louisiana, at Shreveport.

United States

vs.

No. 365.

S. S. Aiken, Jr., and The Wright-Blodgett Company, Ltd.

J. B. Monroe, A. S. Mitchell, Counsel for Defendant.

M. C. Elstner, U. S. Atty., E. P. Mills, Assistant, Counsel  
for Gov.

\*      \*      \*      \*      \*      \*      \*      \*

113      In U. S. Circuit Court, Fifth Circuit, Western  
District of Louisiana, at Shreveport.

United States

vs.

Case No. 365.

S. S. Aiken, Jr., and The Wright-Blodgett Company, Ltd.

It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken.

Copy of deed from S. S. Aiken, Jr., to the Wright-Blodgett Company, Ltd., of date Sept. 28, 1901, filed in evidence and marked "Exhibit A" in case No. 365.

Counsel for defendant stated that they would not object to the introduction of these deeds on any formal grounds.

114 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

### TESTIMONY OF A. G. WINFREE.

Mr. A. G. Winfree, a witness in behalf of complainant, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Elstner:

1. Did you know Nat Wazey?

I did.

2. State whether or not in connection with the Wright-Blodgett Co., Ltd., he exercised a general supervision over the purchase of lands in their interest.

I do not know of my own knowledge. I can state that I recognized Mr. Wazey as such. It was so understood throughout the community and I so understood that he represented the Wright-Blodgett Co., Ltd.

3. From what circumstances that came under your personal observation were you led to the conclusion that Nat Wazey represented The Wright-Blodgett Co. in the investigation of lands and in securing their purchase? State your personal observations, conduct of Mr. Wazey, what he did and all you know about it.

Well, at the time Mr. Wazey was buying lands in Vernon Parish I was running a livery stable and at the times when he would come to Leesville he would stop with me; consequently we became well acquainted and I knew at the time that he was purchasing lands throughout the parish by various conversations and transactions I had heard of,  
115 but still I don't know that I was ever a witness to any transaction he made for these people. It was only current talk throughout the community.

(Counsel for defendant objects to above testimony on the ground that it is mere hearsay.)

4. State whether or not Mr. Wazey informed you of the purchase of any lands that he had made for the Wright-Blodgett Co.?

I cannot answer that question. I do not really know of any particular instance. It is too far back to remember.

5. Do you know whether or not from any statement he ever made to you that he represented himself as the agent of Wright-Blodgett Co. in the purchase of lands?

No, sir; I really don't know that he did.

6. Did you ever see him at Leesville acting in the capacity of attesting witness in any of these purchases that appear on record in this case?

I did not. I was not in position to know those facts.

7. Do you know where Mr. Nat Wazey lived?

I am of the opinion that he lived in the southeast portion of the parish.

8. How far from Leesville?

About 25 or 35 miles. I was never at his place and really do not know that he had a place; only I know that he spoke of his family down there.

9. About what is the distance from Leesville to Lake Charles?

About 70 miles.

10. Did Mr. Wazey, or did he not, have any business occupation in the Town of Leesville?

None that I know of.

11. Did he have any mercantile establishment or office in the Town of Leesville?

Not to my knowledge.

12. How often would you see Mr. Nat Wazey in the Town of Leesville?

I can't remember, but he was there frequently. Possibly weekly; I don't know for certain.

13. You did not see him there often enough to suggest that he was engaged in any permanent or daily business in the Town of Leesville?

No, sir. If he had any business connections in the Town of Leesville I was not aware of it and am not aware of it at the present time.

14. You live in Leesville?  
All of my life.

117 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

### TESTIMONY OF A. N. MAYO.

A. N. Mayo, a witness in behalf of complainant, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Elstner:

1. Mr. Mayo, did you know Nat Wazey?

I did.

2. Do you know whether he is living or dead?

I heard some year or two ago that he was dead.

3. Has there ever been a succession of Nat Wazey open in the Parish of Calcasieu?

I believe not, for I have a record of all probate matters in my office and I cannot recall now of having seen such probate proceedings.

4. Do you know that several years ago Mr. Nat Wazey left the Parish of Calcasieu and was supposed to have been taken to a sanitorium?

It was current report at Lake Charles.

5. How long had you known Nat Wazey prior to his leaving Lake Charles?

Must have been 10 to 14 years.

6. During the latter part of his residence in Calcasieu Parish what business was he engaged in?

(Counsel for defendant objects to this witness stating any-

thing from hearsay, but confining himself to his own knowledge.)

I think I can say it was real estate business. It  
118 was about the only thing I knew of his doing.

7. Do you know anything of his connection with the Wright-Blodgett Co. in the purchase of land without reference to any special tract, but in a general way?

It was currently, or generally, stated and I have understood that he would purchase timber from the Wright-Blodgett Co.; make purchases for them of lands.

(For the purpose of emphasis counsel for defendant objects to this testimony on the ground that it was hearsay.)

8. Have you ever had any conversation with Mr. Nat Wazey himself with reference to his engagements, or employments, or connections with the Wright-Blodgett Co.?

No, sir.

9. You kept a record of the lands in Calcasieu Parish, did you not, in your office?

I have abstract of title records. I have them now.

10. Do you know of any investigations made by Mr. Nat Wazey of the records of lands in Calcasieu Parish for the purpose of making purchases for the Wright-Blodgett Co.?

No, sir.

11. Now, Mr. Mayo, you have stated that it was generally understood that Mr. Nat Wazey was acting in the interest of the Wright-Blodgett Co. in the acquisition of timber lands. Now state just what circumstances led you to make that statement.

(Objected to by counsel for defendant for emphasis as being mere hearsay.)

Not being able to recall any transaction in which any purchase of land as made by Mr. Wazey was for the specific account of Wright-Blodgett Co., but only from the general statement that purchasers made from time to time either for their own account or Wright-Blodgett Company, I have no way of linking any particular transaction as being for the Wright-Blodgett Co. I so often prove up deeds, titles to

119 real estate. Mr. Wazey was in and out of my office

from time to time, but what transactions might have been for the Wright-Blodgett Co. I cannot say.

12. Do you know where Mr. Nat Wazey lived several years prior to his leaving Lake Charles?

He lived in Lake Charles on our principal street.

13. Was Nat Wazey a married man?

Yes, sir; twice married.

14. Prior to his death, or prior to his leaving Lake Charles, how long had he been a citizen and resident of Lake Charles?

I don't remember the year he moved away from Lake Charles. He came to Lake Charles about 1886, I should say, and left there in the latter part of the '90's, as well as I can recall.

15. After leaving there in the latter part of the '90's did he again return to Lake Charles and make his residence there?

I think not, sir.

16. Do you know where he lived after leaving Lake Charles up to the time of his leaving Calcasieu Parish?

I do not know.

17. Do you know anything of his having a residence in the Parish of Vernon?

Only current report.

18. Did his family leave Lake Charles at the time you state in the latter part of the '90's at the time he himself left there?

I do not know, sir.

#### Cross-Examination.

By Mr. Monroe:

1. You say you know that Nat Wazey left a half-brother living in Miss.?

I don't know but what his half-brother was in Lake Charles at the time Mr. Wazey left there, but he is probably now in Mississippi.

2. What is his name?

A. Frank B. Clingo.

3. Did Nat Wazey have any other brothers or sisters by name of Clingo?

I never heard of them.

sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

### TESTIMONY OF BEN M. FOSTER.

Mr. Ben M. Foster, a witness in behalf of complainant, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Mills:

1. Where do you live?

Lake Charles.

2. How long have you lived there?

All my life.

3. What business are you in?

Real estate.

4. How long have you been in that business?

Since 1898.

5. By whom were you employed in 1898?

I was in business with my father from 1898 to 1901.

6. Did you change your employment at that time and go in with someone else?

About the fall of 1901 I went in with Wright-Blodgett Company.

7. Do you remember the exact date?

No; it was in the fall. I don't remember the exact date.

8. At what place were you employed?

At Lake Charles.

9. Did they maintain an office there?

121 They did.

10. In what capacity were you employed by them?

Looking after the office generally and keeping books.

11. What was the extent of your authority; the nature of your work?

I was under Mr. Kelly.

12. When you say "looking after the office generally" you mean attending to the business of the office?

Yes, sir; and making my reports to Mr. Kelly.

13. How large was the office force of the Wright-Blodgett Co. at that time?

Just one.

14. You were the only man in the office?

Yes, sir.

15. Yet you say you were under Mr. Kelly?

He did not stay in the office all the time.

16. About how much time was Mr. Kelly there, roughly speaking?

During the first part of the time I was in the office Mr. Kelly was in for several weeks. He generally stayed several weeks at a time. He came about every three or four months—sometimes oftener.

17. During his absence you had full charge of the office work?

Yes, sir.

18. Did you know Nat Wazey?

Quite well.

19. Was he in the employ of the Wright-Blodgett Co. when you went to work for them?

Yes, sir.

20. In what capacity was he employed?

He was a woodman.

21. What do you mean by a woodman?

(For emphasis the objection of irrelevancy was here made by counsel for defense on ground that the employment of this witness, not having taken place until the fall of 1901, nothing that he knows can be relevant to any act or allegation set forth by the pleadings at issue in these cases.)

122 Well, he was employed to inspect timber for the company and make reports on it.

22. What else did he do?

At that time the company's holdings were scattered. They were trying to "block up."

23. What do you mean by "block up"?

They were consolidating their holdings.



24. They would buy lands in between lands they already owned?

Yes, to make their holdings contiguous.

25. How many men were employed as woodmen?

No one else. That is, regularly.

26. Do you know whether there was any record in the office of this company that showed that the lands upon which Wazey would report had been gone over or cruised at any other time?

When the company bought they had the cruisers report on what they bought.

27. Was there any record showing a prior report to that made by Wazey?

In some cases, yes. I remember in some of the townships where the company bought they had a cruisers' report on nearly everything in the whole township. That was for the general office record, showing where was the good timber land.

28. These reports made by Mr. Wazey were made for what purpose?

The purpose of buying. Wazey would make his report as to how much timber there was on the land, which gave the company a good idea how much to pay for the land.

29. What investigation would be made by the company as to titles of these lands that Mr. Wazey would report on?

Well, in cases where there was any doubt at all or any long chain of title we had abstract made. In other cases where there was a patent or receiver's receipt to go by we simply took that first record.

30. It is a fact that the company would buy upon  
123 the report of Mr. Wazey as to the timber?

(Objected to as leading.)

And a fact that where there was a receiver's receipt for the land or the patent they would go by it?

If there was just a receiver's receipt or patent and no other chain of title and if there was timber on the land the company felt justified in buying it.

31. In these cases when Mr. Wazey would report as to the status of the title to the timber on land and as to whether the land was held under a receiver's receipt or patent would any other investigation be made before the company purchased?

No, except that usually—and, I should say, in almost every case—either the receivers' receipt or the patent was sent to the office.

32. But they would send no one to the land to make investigation?

We would send no one from the office if we had a receiver's receipt or patent, any more than we would send anyone to Alexandria or to Lake Charles to investigate as to an abstract.

33. The [then], I understand your testimony to be that the company would buy in cases where there was a patent or receiver's receipt upon the report to Mr. Wazey?

Yes, sir; that is a fact.

34. Without any further investigation?

Yes, sir.

35. Was Mr. Wazey located in Lake Charles, or did he live in the country where he bought timber?

He lived in the woods.

36. Was it part of his business to live in the woods and go around where the land was?

(Objected to as leading.)

He could find out thing at less expense by living in the woods.

37. Where did he spend his time?

124 In the woods.

38. Now, Mr. Foster, from your experience in the office and your examination of the records and familiarity with them and from your conversations with Mr. Kelly and with Mr. Wazey, do you know how long prior to the time you went into the office Mr. Wazey had been employed by the company?

(For emphasis the objection is here made by counsel for defendant that the question calls for secondary and hearsay evidence which is inadmissible and is hereby objected to.)

I don't know just how long. I know it was some years before I went in. Possibly, maybe three, years.

39. Do you know in what capacity he had been employed prior to the time you went into office?

(Same objection here made by counsel for defendant.)

I don't know, but I suppose it was in the same way.

40. For what reason do you suppose it was in the same way?

For the reason that no change was made in the office when I went in, that I know of.

41. Did the records of the office show in any way what his employment had been?

Practically the same.

42. Just the same as afterwards?

Yes, sir. He got his salary just the same as afterwards.

43. In what way would these lands bought through Wazey be paid for?

Currency, usually.

44. Who would do the paying?

Most of the time Mr. Wazey; once in a while Mr. Kelly, and occasionally I went up. Sometimes other people would pay when they bought through some other agent.

#### Direct Examination Continued.

By Mr. Elstner:

45. You know the domicile of the Wright-Blodgett Company?

Saginaw, Wesside, Michigan.

46. Firm or corporation?

125 A partnership association, so the deeds all recite.

47. Do you know the individual members of that partnership association?

I know some of them.

48. Give their names.

I can only state positively as to the officers—Mr. Davis, Mr. Blodgett and Mr. Stork.

(For emphasis the objection is here made by counsel for defendant that the testimony is irrelevant.)

49. Do you know that any of those whose names are mentioned by you came to Lake Charles and in person supervised or conducted the affairs of the partnership?

Mr. Stork came down about one [once] a year usually. He always stayed at the office.

50. Do you know that Mr. Stork at any time went out and made personal investigations of the lands to be acquired by Wright-Blodgett Co.?

I don't believe so. Not to my knowledge.

51. Who exercised general supervisory control over the affairs of the Wright-Blodgett Co. in Louisiana?

Mr. Michael H. Kelly.

52. Do you know about what time Wright-Blodgett Co. began their operations in Louisiana?

In 1898, I believe.

53. What time did Mr. Kelly assume supervision of the affairs in Louisiana?

I do not know. I suppose when the company came into Louisiana. Mr. Kelly had charge when I went in in 1901.

54. You don't know how long prior to 1901 he acted in that capacity?

I don't know, but I suppose from the beginning.

55. How long prior to 1901 had you known Mr. Kelly?

Two years or more.

56. Where?

In Lake Cahrles.

57. You saw Mr. Kelly frequently prior to 1901?

126 Yes, sir; I saw him often. Our offices were adjoining. That is, there was only a door between his office and that of my father.

58. Were you ever in his office prior to 1901, either socially or otherwise?

Yes, sir.

59. Did you know from your visits to his office and from the observations you there made in what business he was engaged prior to 1901?

Yes, sir. He managed the business of Wright-Blodgett Company.

60. Did you know him as early as 1898?

That is so far back I hardly remember, but I believe that is about the time I first saw him.

61. From that day on from your observations you know he was engaged in connection with the Wright-Blodgett Co.?

Yes, sir.

62. Do you know whether or not Mr. Kelly visited the lands that were subsequently purchased by the Wright-Blodgett Co. prior to their purchase?

I don't know whether he saw all of them, but I suppose Mr. Kelly must have looked over the main purchase before he purchased. (By main purchase meaning original purchase about 1898 of the Fairbanks and Head and other lands.)

63. Do you know of Mr. Kelly's going with Mr. Nat Wazey at any time to any of the lands purchased at the suggestion of Mr. Wazey in order to look over them?

Yes; frequently he went with Mr. Wazey into the woods to verify his estimates and things of that kind.

64. Do you know where Mr. Nat Wazey had a homestead where he lived in the woods?

Yes, sir.

65. Did you ever visit him there?

Yes, sir.

6. Did Mr. Kelly ever go with you there?

127 Yes. I made one or two trips with Mr. Kelly; maybe several.

67. Ever stop at Mr. Wazey's all night?

Several times.

68. Mr. Kelly also?

Yes, sir.

69. Were you ever present at the time that Mr. Wazey paid for any of these lands?

Yes; several times.

70. Now, these deeds, without taking them up separately, specify that there was so much paid in cash as a consideration of the purchaser from the man who held the final receipt—that is, the entryman. At the sales at which you were present did you see the money paid?

(At this point counsel for defendant asks counsel for complainant if, in the question above, he was referring to the lands in controversy in the bills now before the Court, and in reply counsel for complainant substitutes the following question for Q. No. 70:)

71. Do you know anything, of your own knowledge, in regard to the sales of the lands by the homesteaders to the Wright-Blodgett Co. by being personally present and witnessing the sales prior to what date?

Late in the fall of 1901. I think in the month of December; might have been November.

72. At no sale prior to 1901 were you present?  
No, sir.

Direct Examination Continued.

By Mr. Mills:

73. Do you remember the numbers of the lands on which Wazey lived?

Section 28; Township 1 South; Range 5.

74. You are positive as to that?

Yes, sir.

75. When was it that you visited him?

Oh, I don't know how many times.

76. Was Wazey living there with his family?

Yes, sir.

77. He had his household goods?

128 Yes, sir. He made his home there.

78. Do you know how long he lived there? When was the first time you saw him there?

Soon after I went in with the company, within a few months. He had just moved there from Slabtown.

79. How long do you remember that he lived out in the woods?

He was still living there when I left the employ of the company. The place was called Sigler.

80. When did you leave the employ of the company?

The 1st of March, 1904.

81. Did he live at any other place during that time?

No, sir.

Cross-Examination.

By Mr. Monroe:

1. These visits which you say you made to Mr. Wazey in company with Mr. Kelly were all made after your employment with the Wright-Bloodgett Company in 1901, and the earliest visit you remember of making was some month or two after your employment?

Yes, sir.

2. If I understood you correctly, you stated the company had caused to be made a general cruisers' estimate of the timber in that section of the country?

No, I did not state that they caused the cruise to be made, but I believe they had such a cruise from Mr. J. D. Lacy & Co.

3. Who are J. D. Lacy & Co.?

Real estate men with an office in New Orleans.

4. Do they or do they not make a business of making these timber cruises or estimates?

It is their principal business, or was at that time.

5. How do they stand in the business and how are their estimates considered by timber people?

Of the best.

6. You are connected with the timber business  
129 to some extent? And have been for some time?

Yes, sir.

7. Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacy & Co. without making any special investigation themselves?

That is the usual case; the usual method of doing business.

8. You say Wright-Blodgett Co. had the estimates of J. D. Lacy & Co. for that part of the country?

Yes, sir. I think it was made before their original purchase and I think they got their figures from Lacy for the original purchase.

9. What acreage was their original purchase?

I have forgotten now.

10. Approximately?

Something more than 100,000 acres.

11. During your encumbrance office under Wright-Blodgett Co. did any law firm examine and pass on titles for them?

Yes, sir; Pugo & Moss of Lake Charles.

12. What was the custom of Wright-Blodgett Co. relative to examination of titles by Pugo & Moss?

They turned all abstracts over to them for their opinion before they were sent to the home office.

13. Did they examine the title before the sale was actually concluded?

Well, in some cases they did and in some cases they did not.

14. Was it the custom of the office to submit the title to Pugo & Moss for examination, have them approve it and then pass the deed and record it and then submit the entire abstract with deed to them and have them write their approval on it?

That was the case during the latter part of the time I was in office, but when there was a patent or a receiver's receipt sometimes we bought and paid for the land before the title was approved.

15. I take it that in all cases where Pugo & Moss  
130 gave a written opinion on the back of an abstract  
that the title had been examined before purchasing  
and subsequently had been submitted to them for opinion and  
written approval?

That is a fact.

16. Was J. M. Boyd in the employ of Wright-Blodgett Co.  
during the years 1901-02, or prior to those years?

He was never in the employ of the company while I was  
with them and I don't believe before I was with them.

17. The Wright-Blodgett Co. bought considerable land out  
in that neighborhood, did it not?

Yes; more than 50,000 acres, I suppose.

18. Was it not the custom of Wright-Blodgett Co. to in-  
sist upon the delivery to them of a final receipt or patent before  
paying for land?

Yes, it was always the case.

19. Their instructions to the office were to buy nothing  
unless they had either a receiver's receipt or a patent?

Well, unless in the case of a complicated title; one that had  
passed through many hands. Then we would not insist upon  
receipt or patent. But if the only instrument was a patent or  
receiver's receipt we always got the one or the other unless it  
might be where the company bought only a part of a home-  
stead and then, although we got the patent, we returned the  
patent to the entryman. But in case of receiver's receipt we  
got it. That was always before the sale was closed.

20. Mr. Foster, you spoke of certain handling of cash in  
purchases by Mr. Wazey, and in asking some of the questions  
attorney for complainant used the expression "these lands."  
It is important to find out what lands were being referred to.  
You would not, for instance, in answering those questions have  
been referring to any deed which was made prior to the time  
you went into the employment of the Wright-Blodgett Co. in  
1901, would you?

No, sir.

21. The testimony of that subject was relative to  
131 some transactions subsequent to that date?



On lands generally during the time I was with the company. Nothing prior thereto.

22. When you went into the employ of the Wright-Blodgett Co. was any one else purchasing lands and timber for them beside Mr. Wazey?

Yes; Mr. Wingate at Leesville bought some, and Lewis Melder of Glenmora bought some.

23. You stated on your direct examination that you supposed that Mr. Wazey had been buying before you went into the employ of the Wright-Blodgett Co. in 1901. Did that supposition apply equally to these other gentlemen who were purchasing?

Yes, sir.

#### Redirect Examination.

By Mr. Elstner:

1. Did you have in the office of the Wright-Blodgett Co. in Lake Charles a general map showing the pine lands in the several parishes around?

We did.

2. Did that map show the lands owned by individuals and also the lands then belonging to the public domain of the United States?

No, the maps showed the ownership by private corporations of the principal big holdings throughout the pine belt.

3. Then the Wright-Blodgett Co., or its officers in Lake Charles, had no knowledge of the pine lands in Vernon, Rapides and Calcasieu parishes except insofar as they were owned by corporations or individuals?

The white places on the map would show that other corporations did not own that particular land.

4. Then you would take it that all the lands not appearing on the map as owned by corporations or individuals were public lands?

No, because we did not mark up the individual lands. If there was an individual ownership of, say, a quarter section we did not note it on the map.

5. Did the Wright-Blodgett Co. ever keep maps or records of any kind in its office for a knowledge of the lands belonging to the public domain in these parishes?

Yes, from time to time we got such records. Not gener-

ally, but in special cases we have seen maps showing the ownership of all of the holdings and that which was not colored was public domain land. In other words, in the company's office, in "blocking up" their lands, we tried to know who owned all of the intermingling lands.

6. As a matter of fact, the value of pine lands depends to some degree on the compact forms in which that land is located, does it not?

Yes, sir; and a big degree, too.

7. Was it not the purpose of the Wright-Blodgett Co., knowing this fact, to try and secure as large a tract of land in compact form as practicable?

Yes, sir.

8. Did they not make inquiries, both from maps and from personal investigations, with a view of ascertaining the location and ownership of lands that would facilitate them in carrying out this object?

They did.

9. In doing this would they not necessarily ascertain lands in juxtaposition to their own that were within the public domain?

They did.

10. Did Mr. Kelly and Mr. Wazey, or other representatives of the Wright-Blodgett Co., frequently visit their holdings?

Mr. Wazey was on the ground all the time; Mr. Kelly made periodical trips, and I have been on it several times.

11. With reference to the trips made, what would you call periodical trips?

Every time he would come down, which was every three or four months.

12. When Mr. Kelly was away you were in charge of the office?

Yes, sir.

13. During his absence did you exercise the same kind of supervision over the affairs of the company that Mr. Kelly did in person when present?

No; I referred everything to Mr. Kelly.

14. I do not mean did you exercise the same degree of control over the affairs of the company, but did you frequently visit the holdings of the company in order to ascertain the existing condition during his absence?

I did.

15. You had on the map of the company, and from that map could determine the localities visited by you when going over the holdings of the company?

(For emphasis the objection is here made that this testimony is totally irrelevant for the reason that witness has repeatedly stated he was not employed by the company until 1901 and subsequent thereto, and that all the purchases in these cases by Wright-Blodgett Company were prior to that date.)

16. Whenever you visited these holdings did you have an opportunity of becoming acquainted with the people living in the community?

To a certain extent, yes.

17. Did you have an opportunity of seeing in what kind of business they were engaged?

Most of them were farmers.

18. Did you have any opportunity of observing or judging of their apparent financial condition?

They were just like the ordinary piney-wood folks.

19. Do you know in what amounts, if any, money was sent from Lake Charles to Nat Wazey at Glenmora?

Money was sent there only once or twice, possibly three times, to my knowledge.

20. Do you know in what amounts?

I do not recall; something like \$1,000.00, possibly more.

21. Do you know where the Wright-Blodgett Co. kept, either as a firm or through their agents, their bank account in the city of Lake Charles?

They had no bank account in Lake Charles.

22. Did Mr. Kelly have a bank account in Lake Charles?

He did.

23. At what bank?

134 Calcasieu National Bank.

24. Do you know whether Mr. Kelly kept that money on deposit there or received the money in that bank as his own individual funds or as an agent for the Wright-Blodgett Co?

I suppose that it was the Wright-Blodgett Co.'s money.

(For emphasis objection is here made that this is merely hearsay.)

25. Why do you suppose it was Wright-Blodgett's money? Because it was used for the company.

26. Can you state whether or not on three or more occasions that out of that fund as much as \$2,000.00 at a time had been sent Nat Wazey for lands acquired?

Yes, but I don't know how many times; several times. And I don't remember the exact amounts. There might have been more money than that sent to him at times. Usually he got enough money to pay for the lands he had written in about. If several sales had been made he might have gotten as much as \$5,000.00 at one time, but if only one sale it would have been correspondingly less.

27. Do you know of any money being sent to Wazey at any time that was used by him for the payment of the purchase price of lands that were held by the entrymen under final receiver's receipt and was paid to the entrymen by Wazey and the final receipt turned over to Wazey and then subsequently delivered to the representatives of the Wright-Blodgett Co. at Lake Charles?

(By way of emphasis the objection is here made that any answer to this question which does not pertain to land described in the bills in one of the cases now before the court will be irrelevant, and that any answer which may pertain to lands described in one of the bills will be irrelevant as to the other eight, which objection is here made for emphasis.)

Yes, sir.

28. Do you know how often that occurred?

(Same objection made here as to No. 27.)

Every time they bought on final receipt.

29. You have been in the land business and Mr. Kelly has been in the land business for a long time. Are you familiar with the homestead laws of the United States?

135 (Objected to as irrelevant.)

I am.

30. About how far from Lake Charles are the lands held by the Wright-Blodgett Co.?

You mean "were held," do you not? They don't own any now.

31. Yes, sir. About how far from Lake Charles were the lands known as the lands of the Wright-Blodgett Company?

About sixty miles.

32. About how far from a railroad?

About twelve miles, the nearest of them. They had some scattered lands within four or five miles of the Watkins road.

#### Re-Examination Continued.

By Mr. Mills:

33. Who held the same position occupied by you prior to the time you went to work for the Wright-Blodgett people?

(Objected to for emphasis as hearsay.)

Thomas E. Dickens.

34. How do you know he was employed by them?

I have seen him there. Our offices were next to each other.

35. For how long a period was he employed by them prior to the time you went to work for them?

A couple of years.

36. Was he the only man in charge of the office, or were there other men in the office with him?

He was the only one.

37. Where is he now?

I don't know.

38. Mr. Monroe has called your attention to the fact that a cruise or report had been made on lands in this territory about 1898. In cases where lands were bought upon the recommendation and report of Mr. Wazey what would govern the action of the company, the report of Mr. Wazey or the record of the cruise?

As a general thing there would not be much difference between the reports, but if there should be Mr. Wazey was sent back to see if an error had been made.

39. If he stated that no error had been made in the report what action would be taken?

His report would be accepted.

## Recross-Examination.

By Mr. Monroe:

1. About how often (during the course of your employment) in a year would you get on any individual forty belonging to the Wright-Blodgett Co.?

I should say on an average of every three or four months.

2. That was on the holdings belonging to them?

Yes, sir; to the Wright-Blodgett Company.

## SECOND EXAMINATION OF MR. BEN M. FOSTER.

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## Direct Examination.

By Mr. Elstner:

1. Mr. Foster, did you at any time deliver money in person to Mr. Nat Wazey for the purpose of purchasing land for Wright-Blodgett Co.?

A. I did.

2. About how many times?

A. Several times. I don't remember how many times.

3. State about what amounts.

A. Usually about \$1,000.00 at a time. I have delivered as high as \$5,000.00 at a time.

4. Within what period?

A. During the time I was with the company in the fall of 1901 to the fall of 1904.

5. Where would you deliver this money to Wazey?

A. Sometimes in Lake Charles. Sometimes in Sigler. Maybe once or twice in Glenmora.

6. You delivered it as a representative of Wright-Blodgett Company?

A. Yes, sir.

## Cross-Examination.

By Mr. Monroe:

1. As I understand, Nat Wazey would go out through the country and get price on various lands, would bring them back and submit them to the Lake Charles office of Wright-Blodgett Co., the Wright-Blodgett Co. would then have the titles passed upon, and if the prices were all right and the titles correct, would instruct Mr. Wazey to purchase and would give him money to complete the purchase with. Is that correct?

A. That is correct.

2. And in all those cases was the title examined before the act of sale was actually passed?

A. In most cases. There might have been a few cases. If you mean by attorneys, I will say "In most cases;" if you mean by the office, I will say "In all cases."

3. In one or two cases when Wazey broke through that rule he was held personally responsible for the purchases, he having purchased without submitting back to the office first?

A. Yes, sir; that is a fact.

4. When you were last on the stand you stated that at some time during your holding of office under the Wright-Blodgett Co. that it became customary when Wazey submitted simply a final receipt to authorize the purchase without having the abstract made and submitted to attorneys. Was that the custom when you first went into office?

A. No; when I first went into office it was the custom, and, I believe, instructions, that all titles had to be examined by Pugo & Moss before any deeds were passed.

5. And after you went into office, they having always approved final receipts, you fell into the habit of not submitting final receipts to them any more. Is that correct?

A. Yes; final receipts and patents. If titles were based on final receipt or patent, having been approved before them, we did not go into the trouble and expense of having abstract made to show one item. We put the deed on record and then had abstract made showing title in Wright-Blodgett Co., and then turned it over to the attorneys for approval. That was more as a matter of form.

6. At the time you first went into office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pugo & Moss for approval?

A. Yes, sir; all titles.

6. Mr. Moss testified this morning that it was the opinion among local members of the bar at that time that purchasers were justified in buying on a patent or final receipt without further investigation. When you first went into office was any advice of that character given to you by the firm?

A. I don't remember any special advice, but that was my understanding—that either a final receipt or a patent was as good as a title could be.

139 (Counsel for complainant in these cases makes no special objection here to the irrelevancy by reason of the witness being called upon to state the efficacy of the correctness or incorrectness of his conclusions at the time as to questions of law, but rests the right of objection to all testimony taken in this case on the special right specified and agreed to by both counsel for complainant and counsel for the defendant in the beginning of the taking of this testimony, thinking it unnecessary to specifically reiterate the safeguards set forth in this first understanding.)

7. Mr. Foster, you have had some experience as a timber estimator?

A. Yes, sir.

8. When a timber estimator goes on land and estimates timber, does he pay any particular notice to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact of how the house is located on the land. Also make a note of the fact of how much has been cleared in order to justify any statement that is made as to the timber.

9. Do you make any statement as to the condition of the house?

A. None whatever—I don't.

10. Do you pay any particular attention to the condition of the house?

A. Not to the house; simply as to how much land is cleared.

11. You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

12. That is the custom observed among all timber estimators?

A. Yes.

13. You stated a while ago that you had given sums of money of from \$2000 to \$5000 to Wazey in cash. Those sums of money were given him to pay for specified purchases which had been submitted to the office, titles approved and he authorized to buy?

A. In all cases.



By Mr. Elsner:

(Counsel for asking if in two or three instances Mr. Nat Wazey made purchases for which the Wright-Blodgett Co. afterwards held him responsible for the reason that they had not been approved before hand by Wright-Blodgett Co., witness answered that Wazey was charged with these sales.)

1. Was any sum of money withheld from Wazey in order to make him responsible for any errors that might have been made in purchase?

A. Yes, in two or three cases Wazey was charged with land that he had bought without submitting titles, and afterwards we found some discrepency in the title. That amount remained charged against him (Wazey) until he had titles straightened.

2. Did either of these instances to which you refer apply to purchases made by reason of a final receipt?

A. I don't recollect. I remember that we held, I think, two sales on Wazey's account. But whether on receiver's receipt or something else I don't recall. I think one of them was on account of a defective tax title. But I don't exactly remember.

3. You have stated that you never made any inquiry further than to find the existence either of the patent or the receiver's receipt in cases of that character?

A. No; we always accepted them, except towards the last few months I was in office. That was after the investigation up there by Mr. Ervin, special agent.

4. Then it is not probable that any of the instances to which you refer, wherein Mr. Wazey was held responsible for his purchases occurred in cases of either patents or final receipts?

A. I don't recollect the special name that Wazey was charged with.

5. But it was in case of either patent or final receipt?

A. It would have been in either a case of patent or receipt because all titles went back to that.

6. Counsel for defendant asked you if you would, when going upon the lands covered by a final receipt, either

141 as a timber estimator or for the purpose of viewing the lands, you paid any attention to the character and extent of improvements, and you answered no, only to the extent and for the purpose of observing the value of the timber standing on the land at the time.

A. That was the only report we could make. We would notice them generally but would pay no attention to them. We would consider improvements on timber land as of no value. It was simply timber we were looking for.

7. Are you familiar with the forms used in acquiring title to the public lands of the United States under the homestead laws in making both the five-year proof and the commutation proof?

A. I am; yes, sir.

8. In going upon these lands would you make any investigation for the purpose of ascertaining whether the entrymen had complied with the laws so as to entitle them to a final receipt?

A. I never did.

## 142 TESTIMONY OF H. H. ROCK.

Mr. H. H. ROCK, witness in behalf of complainant, being duly sworn, testified as follows:

### Direct Examination.

By Mr. Elstner:

1. Where do you reside?

Lake Charles, La.

2. What business are you engaged in?

Banking business.

3. With what bank?

Caleasien National Bank.

4. Have you with you a statement from your shipping book?

I have the shipping book?

5. I wish you would turn to that book and find any shipments that may have been made to Mr. Nat Wazey from your bank.

The only one I find is on October 7, 1902, a shipment of \$2,000.00 to Glenmora, La., sent by express.

6. At whose instance was that shipment made?

I could not say as to that. I don't remember that far back.

7. Don't your book show?

That book does not show.

8. Have you a book that does show?

Well, unless there was some check given for it it would not. If it was charged to some one's account it would show.

9. Do you know at whose instance that shipment was made?

I could not say positively who ordered the shipment made.

10. Do you know out of what fund it was shipped?

No, I do not know for sure.

11. You have no knowledge out of what funds it was shipped?

No, sir.

12. Was it out of a fund belonging to Nat Wazey personally in the bank?

I don't think so; I could not say positively without looking it up.

13. Is that the only one in that book? Any shipments prior to that time?

I haven't looked clear through the book.

14. I will ask that you take the book and make close examination and find all the shipments that have been made, as shown by that book, from 1898 up to 1903.

The book does not commence until 1902.

15. I will ask why you did not comply with your subpoena duces tecum?

Because that was the first shipping book that we ever used. Our business was so small before that time that we just used our express book as receipt. We did not have a regular shipping book.

16. Did you have any books or records in your bank that corresponded with the book that you produced herein in obedience to the order of the court?

No, sir.

17. Any records which showed shipments made by the bank prior to the use of this book?

Yes, sir.

18. What do you call them?

Express books.

19. Are they now in possession of your bank?

I don't know just where they are if they are.

20. You don't know whether they are in the possession of your bank or not?

No, sir.

21. Were you in the bank then?

Not prior to 1900.

22. And 1902 is the time you first commenced keeping this book?

Yes, sir.

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## TESTIMONY OF C. D. MOSS.

## Direct Examination.

By Mr. Monroe:

1. Mr. Moss, you are an attorney by profession and are a member of the law firm of Pugo & Moss of Lake Charles, La.?

2. Yes, sir.

3. That firm has been practicing law in Lake Charles since some time prior to the year 1898?

Yes, sir; since 1896.

4. Was your firm employed by the Wright-Blodgett Co. in or about the years 1898 and 1899?

Yes, sir. My recollection is that the employment began about 1899.

5. What was the nature of that employment?

Our firm was employed to pass particularly upon abstract of titles upon lands the company was acquiring in the parishes of Calcasieu, Vernon and Rapides, and also to advise representatives of the company at Lake Charles in reference to the purchase of lands.

6. What was the custom adopted by your good selves and the Wright-Blodgett Company relative to these examinations of title?

Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office after the deeds were acquired from the different owners, and these deeds were carried on the abstracts so that our opinions would show our opinion of the

titles in the Wright-Blodgett Company. In some cases that I recall there would be two written opinions.

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## Cross Examination.

By Mr. Mills:

1. When your connection with the Wright-Blodgett Co. began who was in charge of their office at Lake Charles?

Mr. Michael Kelly.

2. Who made arrangements with you for your employment?

My recollection is that Mr. Kelly did. That is my recollection of the matter. He might have had the arrangement approved by the home office.

3. Do you remember when Mr. Ben M. Foster went to work for the Co.?

Mr. Foster went to work for the company at Lake Charles, but I can not give you exact date. To the best of my recollection it was near 1902. I can not state the date definitely.

4. Prior to his employment who was employed in the office of the Wright-Blodgett Company?

Mr. Kelly was in Lake Charles himself at the beginning. After Mr. Kelly was there for some time and returned North, Mr. Thomas Dickens was in the office for some months. I can not give you the exact length of time. After Mr. Dickens my recollection is that Mr. David Livingstone, a young man of Lake Charles, was there several months.

5. Where is Mr. Livingstone?

At Lake Charles. And then I think Mr. Foster followed Mr. Livingstone. With reference to the time these parties were in the office I am testifying from recollection. Mr. Kelly and Mr. Stork would know better than I.

6. Who would bring these abstracts and deeds to your office for examination?

When Mr. Kelly was there he would bring them. In his absence Mr. Dickens would bring them, or Mr. Foster, or Mr. Livingstone, as the case might be. If Mr. Kelly was in the office he usually brought them in.

7. How much time was Mr. Kelly there?

When Mr. Kelly was first in Lake Charles, about  
146      1899 or 1900, he was there for twelve months or

mor (I cannot give the length of time definitely) for one or two years.

8. Constantly?

He would return to his home in the summer time.

9. Did you have any dealings with any other employe of the company besides those you have mentioned?

No direct dealings that I can recall. The parties I have mentioned were the parties in the local office at Lake Charles. The local office was in the same building in Lake Charles as our law office—the First National Bank Building.

10. Do you know whether or not from 1898 to 1902 a man by the name of Nat Wazey was employed by the company?

Nat Wazey did some work for the company out in the field.

11. Do you know whether he was regularly employed or was employed spasmodically?

I could not answer that question because I really don't know. Mr. Wazey was at that time living in the northern part of Calcasieu or about the edge of Vernon Parish, and I did not see him in Lake Charles more than twice a year. He was out in the country.

12. In looking over these papers, abstracts, deeds, etc., did you ever have any occasion to look over or notice any reports from Nat Wazey regarding any transaction?

No, sir. No report from Wazey would ever come to our office; at least, I recall none.

13. Mr. Moss, how is it that you know then that Nat Wazey was employed to do field work as far back as 1898 by the Wright-Blodgett Co.?

I don't know, Mr. Mills, that it extended that far back.

14. How far back do you know it extended?

I cannot tell you with any certainty.

15. How long prior to the employment of Ben M. Foster do you know Nat Wazey was connected with the company?

I cannot answer that question either. It has been about five or six years ago, and my recollection is that Mr. Wazey was doing some work while Mr. Foster was in the local office, but as to how far beyond that time or prior I could not fix that.

16. Do you know that he was employed by the company sometime prior to the time Mr. Foster took up his work?

No, sir; not with certainty enough to answer. Mr. Foster had been at work for the Orange Land Company down there.

and I think Mr. Kelly employed him and he changed right over to the other office, but I can not fix the exact time.

17. Do you know whether Wazey was employed by the Wright-Blodgett Co. prior to 1902?

I can not swear that he was.

18. Do you know?

It is likely that it was prior to that time, but I can not say positively without referring to documents or something that might show such employment. I can not from recollection. It is six years back and I can remember about the dates.

19. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett people?

I think all but the first transaction. My recollection is that when the company first organized that it embraced a very large tract of land from parties in Chicago—the Fairbank people—and according to the best of my recollection that purchase was made before Pugo & Moss ever saw the abstracts of title.

20. In cases where the Wright-Blodgett Co. would purchase direct from entrymen or government land, would you be called upon to pass upon such title where there were no transfers—nor intervening transactions?

That is my recollection; that the abstract would be brought in; either before or after issuance of patent the abstract would always be brought in showing the issuance of the patent or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, written opinion would be given, and then, after the deed was

148 acquired in the name of Wright-Blodgett Co., either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards Mr. Kelly explained to us that he wanted opinion from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that in event of sale of land subsequently, these written opinions could be used.

21. Did you make up a new opinion in each instance when receiver's receipt and patent were submitted to you?

Yes, sir; that is my recollection.

22. You are not positive about it?

It might have been that in a very few cases the deed was taken before the abstract was brought in, but my recollection is that the rule was otherwise.

23. What did the abstract show in a case where there had

been no transfer and the Wright-Blodgett Company was purchasing direct from entrymen after the issuance of receiver's receipt?

In such case, if it was before the issuance of patent and after the issuance of final receipt, it would simply show issuance and record of the final receipt. In other words, we did not have the affidavit of the entryman before transfer.

24. In these cases of purchases after the final receipt, but before patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the homestead law had been complied with?

No; we would have the naked abstract showing just the issuance and record of final receipt.

25. During the years of your employment by the Wright-Blodgett Co., you talked frequently about land matters and titles with Mr. Kelly, did you not?

Yes, sir; but only with reference to the validity of the titles as was shown by the abstracts and in a general way about them. The idea I want to convey is that Mr. Kelly did not talk his private business with me.

26. In his talks with you in regard to the validity  
149 of titles, did he display a thorough knowledge of the homestead law of the U. S.?

I can not testify as to what knowledge Mr. Kelly had at that time of the homestead laws of the U. S.; that is, as to what is required in the matter of proof and residence, etc., by the homestead entrymen I can not say what knowledge he had of those matters.

27. Now, Mr. Moss, you are a lawyer and an intelligent man, and you know you have talked many times with Mr. Kelly in regard to these land matters. Now, I don't presume that you can look into Mr. Kelly's mind and state the exact extent or condition of his knowledge, but you can state whether or not, from your conversations with him, he showed a general thorough knowledge and understanding of the government land laws in regard to homesteads. I ask you to state that.

I can not say that Mr. Kelly when he came to Calcasieu parish about 1899 had a general knowledge of the homestead laws, because I do not recall that we ever discussed them with Mr. Kelly at that time, but we did, in later years, when the government inspectors were sent into Calcasieu, Vernon



and other parishes and it was reported that there had been some fraudulent entries, caution Mr. Kelly particularly about the acquisition of lands on the issuance of final receipts unless the entrymen were complying with the laws and insisted upon his finding out whether such entrymen were complying with the laws as to cultivation, residence, etc. In other words, Mr. Kelly was a stranger to our firm (Pugo & Moss) when he first came to Louisiana in 1899, and we did not know what experience he had had in land matters prior to his coming to Louisiana.

28. Mr. Moss, I don't consider that you have answered the question. I again ask you, from your experience and dealings with Mr. Kelly, between the time when you first met him and he was a stranger to you in 1899 and the time when the inspectors were going about the country in 1902, what impression he created upon you as to his knowledge of land matters and government land laws.

I will have to say in answer to this, Mr. Kelly did not display any great knowledge of land matters and land laws, because he would not make a purchase without coming to the office with his abstract and asking our opinion as to the title, and at that time Mr. Kelly was known to us as an expert timber estimator rather than a man who knew the land laws.

29. Did you ever discuss with him these questions of title?

I don't recall that we ever had any discussions with Mr. Kelly about the acquisition of titles further than to report directly on the abstract until it was rumored that the government was making investigations in that territory.

30. Did you advise the Wright-Blodgett Co. that before transferring any land that they had purchased upon a simple receiver's receipt that it would be advisable for them to make an investigation before they sold the land to any one else?

No, sir; I don't recall that we ever gave any such advise to him or ever thought it was necessary, because up to the time of these rumored investigations we did not know of a single case that had come up in our courts in southwest Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making, themselves, any special investigation of it.

31. After you had learned of these investigations and had become convinced that a purchase upon a simple receiver's re-

ceipt was not a safe purchase, did you advise the Wright-Blodgett Co., or did they advise with you, as to whether or not it would be proper for them to have investigated lands that they had already purchased upon a simple receiver's receipt as to whether or not the homestead laws had been complied with?

No, sir; we did not go into the question of any past transactions, but talked with them about future transactions, to be careful and see that the law was complied with.

32. Now, as to future transactions—did you advise or did they advise with you, as to whether or not it would be safe or proper for them to sell to third persons lands acquired by them upon a simple receiver's receipt without making investigations about the compliance with the law?

No, I don't recall that that question ever came up  
151 or was discussed in the office.

33. Can you remember the exact date, or the approximate date when the Wright-Blodgett Company became aware of these investigations?

No, sir; I can not fix the date definitely.

24. About when?

I can only approximate the time, and I can not get it definitely within a period of over three years, about 1902-1903-1904. I don't remember exactly when the investigations were begun and we did not find out about them until some time after that, because the Government people worked quietly and secretly. I should say along about 1902, '03 or '04.

35. When you called the attention of Mr. Kelly, or any other representative of the Wright-Blodgett Company to the importance of having investigations made when they were about to purchase lands under a receiver's receipt, and before the issuance of patent, was anything at all said about purchases made under those circumstances prior to the hearing of these rumors of inspection?

No, sir; I don't think that past transactions were ever referred to.

36. Now, Mr. Moss, you know that many such purchases had been made prior to that time?

Yes, sir; I know quite a number.

37. You are absolutely sure that when you told these people that there was a question as to the validity of title thus acquired, unless the law had been complied with, that they asked

you absolutely nothing at all about purchases that had already been made under those circumstances?

That is my recollection.

38. Mr. Moss, you do not know as a fact, that in cases of purchases upon a simple patent or simple receiver's receipt, that you were always consulted under those circumstances?

I can not swear that I was consulted in every case.

39. You have never examined the records of all  
152 lands acquired under any circumstances by the Wright-Blodgett Co., and then checked, that up against opinions rendered by your office to ascertain whether or not your office had rendered opinions in cases of all lands?

No, sir.

40. Then, for all you may know or recollect, they may have made a number of purchases upon receiver's receipt or patent where there had been no intervening transfers without consulting you?

Such a thing is possible, but our understanding is that every transaction passed through our office except the original purchase made, as I recall, from the Fairbanks, which was a very large purchase made by Wright-Blodgett Company, and I think that abstract reached the office at some subsequent date and was examined.

#### Re-Examination.

By Mr. Monroe:

1. Mr. Moss, on your cross-examination informally in the course of explanation given to the assistant district attorney, you explained the attitude of the Calcasieu Bar prior to the coming of the government inspectors into Calcasieu parish on the subject of titles based on final receipts from the government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the government inspectors?

Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our courts that I can recall where any charges of fraud was ever made relating to any entries and the lawyers, while they might have been mistaken, thought a final receipt to be equivalent to a patent.

2. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

153 1. The first time that the matter was called to our attention was when the investigation was started by the government to which I have referred, and I cannot give the exact year.

3. In the course of the cross-examination, counsel for complainant seemed to think it strange that after your attention was called to this possibility of trouble no reference was made in your conversations with Mr. Kelly to titles acquired prior to that time. How do you account for the fact that no reference was made to prior acquired titles?

The only way to account for that is that at the time of these investigations the discussion came up as to future care in the acquisition of title where final receipt only had issued; that for the past transactions the patents had at that time been obtained if not in every case, in almost every case. The patent had been obtained and had issued to the original entryman who had issued final receipt, and not having had any litigation at the instance of the government or otherwise attacking such transactions, it was naturally thought that after the issuance of the patent it was all a closed book. It was the lawyers' opinion in such cases.

#### Recross Examination.

By Mr. Mills:

1. The answer that you have just made that you account for your failure to advise them as to past transactions, because you think patents had issued—is that answer based on knowledge or simply opinion or thought on your part?

That was the only way I could account for it; as to the past transactions we were not asked about them.

2. Did you make any investigation as to whether patent had issued in past transactions?

No, we did not make any investigation of our own.

3. Then, if you are asked as to whether or not in cases of purchase upon simple receiver's receipt prior to this investigation patents had issued at the time that you heard of these investigations, you would have to answer, "I don't know?" Is that correct?

Yes, sir; I would so have to answer. Although,  
 154 when patents came in they would be reported to us.  
 I would say, "I don't know," as to each case; I could  
 not say, positively.

4. Then, I understand from your answers, Mr. Moss, that it was the custom of your firm, which was employed by the Wright-Blodgett Company to pass upon the matters of titles, to base your opinion upon the attitude of the bar and to whether or not any suits had been brought or any investigation made by the government rather than by the investigation of the law. Is that correct?

No, not exactly. We thought that when an entryman held his final receipt that he was entitled to the patent. That was our opinion at that time.

5. That was a mere independent matter of opinion, clean from the general attitude of the bar, or was it based on a thorough investigation of the law by you?

It was based upon reading of the law, but not a close study into the homestead law and the requirements in different jurisdictions in such matters. We had approved in the past a great many titles on issuance of final receipt and all had stood, and so we based our knowledge on our past experience and our general knowledge of the law, and we thought we could approve the law on issuance of final receipt.

155 Testimony of MR. C. D. MOSS, witness in behalf  
 of defendant, in the Aken, Jr., Case No. 365.

#### Direct Examination.

By Mr. Monroe:

1. I hand you an abstract of title to which is annexed document purporting to be opinion of Pugo & Moss, and ask that you examine same and state whether the abstract includes the south half of the northwest quarter and the south half of the northeast quarter of Section 2, Township 2 North, Range 5, West?

(Objected to by government, on the ground that the document is the best evidence of what it contains).

Q. [A.] Yes, sir; that tract is covered by this abstract.

2. Please examine written opinion of Pugo & Moss annexed and state whether it is the genuine opinion of those gentlemen?

A. Yes, sir; the opinion was written by myself.

3. As far as you know the custom heretofore described by you of the Wright-Blodgett Company of submitting titles to you before purchasing and submitting completed abstract with deed to Wright-Blodgett Company, Ltd., after purchase of final report followed in this case?

A. So far as I know.

(In connection with testimony of witness, counsel for defendant offers document marked "W-B Co. 5" subject to his right to withdraw same for use in the Bryers case).

(Objected to by government, on the ground that this document is part of the books and records of the company, and is not admissible in evidence in its own behalf).

4. How many titles, all told, did your firm examine for Wright-Blodgett Co.?

A. I am unable to tell you because there was such a large number; we kept no accurate record.

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## Cross-Examination.

By Mr. Mills:

1. Do you know, positively, of your own knowledge, Mr. Moss, whether or not in this case any abstract was presented to you or any opinion rendered by you as to the validity of the title in this case prior to the purchase of the lands by the Wright-Blodgett Company?

A. No, sir; I cannot say that in this particular case there was a prior abstract. I can only testify as to the rule in such case.

157 J. J. HICKS, witness in behalf of complainant,  
being duly sworn, testified as follows:

(The following testimony is to be used on the question of good or bad faith in all the cases in which Wright-Blodgett Company is defendant—this being dictated by counsel for government but being strenuously objected to by counsel for defendant).

Direct Examination.

By Mr. Mills:

1. Mr. Hicks, where do you live?

A. At Leesville in Vernon Parish.

2. How long have you lived there?

A. I moved to Leesville the 3rd day of July, 1899.

3. Did you make a homestead of any lands in Vernon Parish?

A. Yes, sir.

4. How many?

A. One.

5. When did you make that entry?

A. I don't know exactly.

6. Do you remember about when?

A. I think in 1899. It was in the fall after I moved to Leesville in the summer, I think.

7. Do you remember the description of the land you homesteaded and the numbers?

A. No, I do not. I believe it was of Section 8, either the southeast or northeast quarter.

8. Section 8? And what township?

A. 2 north, Range 5, I think.

9. How did you come to make this entry, Mr. Hicks?

A. I did it of my own volition, for a homestead.

10. When did you first learn that this land was vacant?

A. Only a short time before I made the entry.

11. Through whom did you learn that this land was vacant?

A. Through J. M. Boyd.

158 12. Where was Mr. Boyd living at that time?

A. In Vernon Parish, about Cora post-office.

13. Do you know what was his occupation?

A. U. S. Commissioner.

14. Do you know whether he did any other work at that time or not?

A. No, sir; I do not know.

15. You learned through Mr. Boyd that this land, Sec. 8, T. 2, R. 5, was vacant?

A. Yes, sir; I asked him to look up a vacant homestead.

16. Did you make the entry at the land office?

A. Before the clerk of Court at Leesville.

17. What steps did you make to perfect that entry?

A. After making the entry within a short time I hired the improvements put on it—had houses built, rails split and about two acres of land cleared.

18. Who did you hire to do this?

A. I hired Mr. Laerence. I don't remember but that Mr. Bass assisted him.

19. When did you move upon this land to take up your residence?

A. My first visit to the land after the houses were completed must have been sixty days, may be ninety days. I don't remember, but it was only a short length of time.

20. Did you maintain a residence anywhere else?

A. My home was in Leesville.

21. Were you a married man?

A. Yes, sir.

22. Had a family?

A. Yes, sir.

23. Where did your family live?

A. Leesville.

24. Where was your actual residence during the time of this homestead?

A. Leesville.

25. How often, if at all, did you go upon this homestead?

A. Once about every four months, to the best of my recollection.

26. You would visit the land once every four months.

A. Yes, sir.

27. Would you stay any length of time?

A. Spent the night.

28. That was the extent of your residence on this land?

A. Yes, sir.

29. How was this house furnished that you had on the land?



A. I don't remember, so long; not much, a chair or two and a bedstead.

30. Any cooking stove?

A. No, sir; what cooking we did was in a fireplace—old style.

31. What crop did you raise on this land?

A. I raised one crop.

32. Did you raise it, yourself, or hired it raised?

A. Hired it done. Raised corn and some peas with the corn; also had some fruit trees, probably half a dozen or more.

33. Was the crop ever cultivated?

A. I don't know about that. Mr. Allen, my brother-in-law, who had a homestead adjoining this, looked after that part of it.

34. Do you know, of your own knowledge, whether this crop was ever harvested?

A. I do not.

35. How many seasons was this land cultivated?

A. One.

36. Did you ever prove this entry in any way? Ever take out any final papers?

A. Yes, sir; commutation homestead proof.

37. In making this commutation homestead proof, do you remember the time you made it, the date?

A. In 1901, I believe.

38. You are not positive about the date?

A. No, sir.

39. In making this commutation of your entry,  
160 was it necessary to pay any sums of money to the government?

A. Yes, sir.

40. How much?

A. Right around \$400.00 for each entry.

41. Where did you get the money?

For emphasis the objection is here made that this testimony is irrelevant, as it does not tend to prove or disprove any fact or allegation set forth by the pleadings at issue in this case).

A. Mr. Dickens, who was in the employ at that time of the Wright-Blodgett Co., visited Leesville frequently and a short time before the fourteen months' period had expired he

asked me something about the homestead, and I told him, "Yes, I have a homestead," and he asked me then

(Objection here made by defendant, on account of hearsay).

(Counsel for complainant asserts that by testimony heretofore given in this case, it has been shown that Thos. B. Dickens was the agent and employe of the Wright-Blodgett Co., and that, therefore, this statement is directly applicable to the issues involved in these suits).

what I was going to do with the land. I told him I guess I would sell it after I made my proof. The question then came up as to the commutation money, and Mr. Dickens remarked, "I will loan you the money." I told him, "All right," and after I had received my final receipt Mr. Dickens came to Leesville and made me an offer on the land, which I accepted.

42. In compliance with his promise of Mr. Dickens, did he ever loan you or advance you any money?

(Objected to, on grounds of irrelevancy).

A. Yes, sir.

43. State the circumstances, amounts, etc.

161 A. Well, three or four day, as well as I remember, before the day for making proof I wrote Mr. Dickens that I would need about \$200.00. He sent me check for that amount. Upon forwarding the proof together with that amount of money to the land office at Natchitoches, I was advised by the officials that the land was situated out of the \$1.25 limit, and that I would be required to pay \$2.50 per acre, and to the best of my recollection I mailed Mr. Dickens the letter that I had received from the land office and he mailed me check to cover the balance.

44. Where did you address Mr. Dickens?

(For the purpose of emphasis the objection of irrelevancy is again urged against this testimony with the suggestion that the bills in this case set up for grounds of attack upon the patent merely failure to live upon the lands, and make improvements, and that the alleged statements of Mr. Hicks and

Mr. Dickens pertain to questions not raised by the pleadings and are hence irrelevant).

(Counsel for complainant asserts the materiality of this testimony, upon the issue joined by the bill and answer as to the good and faith on the part of the Wright-Blodgett Company, and is offered for the purpose of showing guilty knowledge upon the part of Wright Blodgett Company at the time of and prior to the purchase of these lands through its agent, Dickens, and through its agents, Kelly and Wazey).

A. Lake Charles.

45. Do you know for whom Mr. Dickens worked at that time?

(Objected to, unless witness knows of his own knowledge).

A. I know from hearsay.

46. From his own statement?

A. I only know by this: I was clerk of court and  
162 Mr. Dickens visited my office frequently, looking  
after matters pertaining to deeds conveying lands to  
Wright-Blodgett Company.

47. Did Mr. Dickens state to you whether or not he was furnishing you this money for commutation of land, personally, or for some one else?

A. I do not know.

48. After the commutation of this land, did you receive any final receipt or receiver's receipt?

A. Yes, sir.

49. Did you ever make a sale of this land?

A. Yes, sir.

50. To whom?

A. Wright-Blodgett Co.

51. Examine this and see if it, to the best of your knowledge and belief, a correct copy of the act of transfer?

A. I could not say. I believe it was on a printed form.

52. Is this a correct copy?

A. Yes, sir; I am sure—in fact, I know—it is the deed of  
1901.

53. You sold the land to Wright-Blodgett Company?

A. Yes, sir.

54. Who represented Wright-Blodgett Co. in the making of this sale?

A. Mr. Dickens.

55. This deed recites that it is made for a consideration of \$800.00. Was that amount paid you for the land?

A. Yes, sir.

56. Was it paid in cash?

A. Yes, sir.

57. State whether or not it is a fact that upon the making of this sale you were paid \$800.00 in cash, or \$800.00 less the amount already advanced you for commutation?

A. I was paid the amount less the checks sent me before.

58. Then, the money advanced you by Dickens for commutation of this land was applied when the land was sold Wright-Blodgett Co. as part of the purchase price?

A. I believe it was.

163 59. Don't you know?

A. Yes; I know it was by their deduction.

60. Did Mr. Dickens at any time before the commutation or after or before the sale or after, make any inquiries of you as to what extent you had complied with homestead laws regarding this land?

A. No, sir.

61. How often did Mr. Dickens come to Leesville?

A. He was there quite frequently. I don't remember. Sometimes sixty or ninety days, at other times once a month.

62. You were living openly with your family at Leesville?

A. Yes, sir.

63. Was Mr. Dickens ever at your home?

A. Yes, sir.

64. Do you know from statements made by him whether or not he was aware that you were living at Leesville?

A. He must have known.

65. You were clerk of court at the time?

A. I was.

66. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see if it was probably settled or lived upon, or the homestead laws were complied with?

A. I do not know.

67. Do you know Nat Wazey.

A. Yes, sir; I did know him.

68. How long had you known Wazey at the time you commuted this land?

A. I think I met Mr. Wazey before I was elected clerk of court; about the time I began work for Mr. Winfree in 1899.

69. Did you ever have any talks with Mr. Wazey regarding this land?

A. No, sir.

70. What was Mr. Wazey's occupation?

A. I didn't know; I heard afterwards. Everybody seemed to know he was buying land for Wright-Blodgett Co.

(Objected to, on the ground of irrelevancy and on the ground that it [is] hearsay of the rankest character).

164 71. Do you know where Nat Wazey lived?

A. No, sir; I cannot say [say] that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Wazey's activity and occupation for the Wright-Blodgett Co. was?

A. Well, principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory, I think. That is, where he bought the principal part of land.

74. Mr. Hicks, during the life of your entry before the sale of the land to Wright-Blodgett Co., was or not Nat Wazey frequently in the clerk's office at Leesville?

A. Up to that time, not very often.

75. Was he there, occasionally?

A. Yes, sir.

(Objected to as leading).

76. Was Wazey ever at your house?

A. No, sir.

77. Do you know from his acts or words that he was aware of your living there?

A. I do not.

78. Do you know whether he was aware that you were

clerk of court at Leesville at the time he would file deeds and papers with you?

A. Yes, sir.

79. How far was this homestead of yours from Leesville?

A. In the neighborhood of 20 miles; about 20 or 25 miles.

80. Any railroad connecting the places?

A. No, sir.

81. Any trolley lines of any kind?

A. No, sir.

82. How long would it take you to make a trip from your homestead to Leesville?

A. About five hours.

83. By what method of travel?

A. Buggy.

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#### Cross-Examination.

By Mr. Monroe:

1. Mr. Hicks, I understand that on your homestead there was a good house with furniture and bedding and a fire-place?

A. There was no bedding, but furniture and a fire-place.

2. Was there a bedstead in it?

A. Yes, sir.

2. If I understand correctly, this house was known as a double-pen house and was built directly on the line between your homestead and W. O. Allen's homestead?

A. Yes, sir.

4. W. O. Allen lived in part of that house during the life of the entry?

A. Yes, sir.

5. W. O. Allen's is your brother-in-law?

A. Yes, sir.

Q. During that time there was a certain acreage of land fenced in and cultivated?

A. Yes, sir.

7. I suppose you had a well and a hog-pen?

A. Yes, sir; we got good water from the spring.

8. Good water in the neighborhood?

A. Yes, sir.

9. Had you any out-buildings, any corn-crib?

A. I did not. Mr. Allen had a corn-crib.

10. What family did he have?

A. Wife and one child.

11. You went out every once in a while and stayed several days—a week?

A. Well, one day and night was all the time I had to spend there.

12. I think Mr. Winfree said you had stayed there two weeks. Is he correct?

A. I had frequently spent two weeks looking after matter pertaining to my stock, cattle and matters of that kind, and during the time I would visit my homestead.

13. And these cattle were around on this acreage?

A. Yes, sir; in the cattle range.

14. During the life of your homestead your fences and house were kept in order?

A. Yes, sir.

15. I suppose Mr. Allen and his family kept your part looking habitable and clean so that you would find a clean place to sleep?

A. Mr. Allen looked after my part of it while he was there.

16. You say you made 18-mile ride day before yesterday in 2 1/2 hours?

A. Yes, sir.

17. Now, between friends, Mr. Hicks, don't you think you were laying it on thick when you said it took you five hours to drive twenty miles to your homestead?

A. It frequently took me all day. I had friends on the road where I would stop and lose time.

18. You were in politics in that part of the parish at the time and in making these political pilgrimages it would frequently take five hours or longer, I suppose?

A. Yes, sir.

19. But at a good, hard drive, how long?

A. Four hours in a single rig. If I was going after a doctor in Leesville I could make it in 2 1/2 or 3 hours. Four miles an hour was a good average gait for that country.

20. Mr. Hicks, one thing I want to straighten out. The government has alleged that your entry dated October 9, 1898. I understood on your direct examination that you said you thought it was in 1899. Did you speak from recollection?

A. Yes, sir; I would not be positive about it. It was after I moved to Leesville. I might have moved there in 1898 instead of 1899. The records will show.

21. When did you first know Mr. Dickens?

A. I knew him after I was elected.

22. Clerk of court?

A. Yes, sir; in 1900.

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## Re-Examination.

By Mr. Elstner:

1. Do you know how long Mr. W. O. Allen resided with his family on the homestead entry?

A. Mr. Allen moved from Leesville with his family with the intention of moving directly on his homestead, but after reaching my mother's his wife's health failed and he was in bad health, too, and he occupied a house about three miles from his homestead on account of being near a doctor; but he worked the land on his homestead and visited it frequently.

2. To your own knowledge did he, with his family, reside upon his homestead at all?

A. No, sir.

3. How much of that land did Mr. Allen cultivate?

A. About two acres. That is, about four acres all told; about two acres on his part.

4. How many crops did he raise?

A. Only one, I am pretty sure.

5. You know of what that crop consisted?

A. I do not.

6. Do you know whether it was cultivated or not?

A. No, sir.

7. Mr. Hicks, was the crop either on your place or on the place of Mr. Allen cultivated in a manner in which a farmer usually cultivates his crop?

A. Well, about an average for that part of the country. I hired nine cultivated. Had a two-bit pony and a two-bit plow.

8. And you raised about a two-bit crop?

A. Yes, sir; a few barrels of corn, but I don't remember just how much. Mr. Allen looked after it.

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## Recross Examination.

By Mr. Monroe:

1. Did I understand your testimony to be that Mr. Allen had not lived in the house there at all?



16. Your character in the community had been without stain of any kind?

A. Yes, sir.

(It is admitted that Mr. Hicks was a man of unquestioned good standing in the community so far as is known to the U. S. attorney or his assistant, and that there has never been any other charge of any character, whatever, brought to the attention of the U. S. attorney except in the matter referred to in the examination of this witness by the counsel for the defendant).

#### Redirect Examination.

By Mr. Elstner:

1. Mr. Hicks, did you ever at any time have any understanding with me as U. S. attorney, that the Wright-Blodgett Co. would have any privilege growing out of this transaction locating the lands involved either in your homestead or the homestead of Mr. Allen, except as would accrue to the right of any American citizen when those lands should be, if they were, returned to the public domain?

(Objected to as leading).

A. I thought I had covered that point already. It was my own conclusion. I naturally knew that they would, of course, protect themselves.

2. You have known me for a long time, have you not?

A. Yes, sir.

171 3. You were a witness before the Federal Court at Alexandria in regard to the number of perjury cases growing out of land transactions?

A. Yes, sir.

4. Without putting you upon the stand or putting you under any oath, have I not accepted your statements to me as an individual without question?

A. Yes, sir.

5. Did you not state to me, as a matter of fact, that neither you nor Mr. Walter O. Allen were sworn at the time of making commutation proof in the cases of Hicks and Allen?

A. Yes, sir.

6. Did you not know, as a matter of fact, that along about the time of assigning this consent pro confesso that you were not to be prosecuted in this case?

A. Well, I don't remember, Mr. Elstner, any direct statement to me, but reading between the lines I supposed there would be no prosecution.

7. Were you not aware of the fact that you had not been sworn and that I, as U. S. attorney, was aware of that fact?

A. Yes, sir; I was aware of the fact that I was not sworn. I did not know that you knew it.

8. You had no reason to believe that I discredited your assertion that you had not been sworn?

A. No, sir.

9. You know that the proof in the cases of J. J. Hicks and W. O. Allen were both made before J. M. Boyd?

A. They were.

10. Do you know Mr. Boyd?

A. Yes, sir.

11. Do you know that it is currently reported and has been asserted by Mr. Boyd that he never swore any witness; that he did not think it necessary; that it was merely a matter of form?

A. Yes, sir.

12. Were you present at the Court at Alexandria when J. M. Boyd, U. S. Commissioner, was called as a witness to prove the administration of an oath by him as such official to the homesteader and his witnesses in the case of commutation proof and heard him state under oath that he regarded this proof as a mere matter of form and never inquired the parties to be sworn?

A. I was.

(It is conceded on the part of the government that these commutation proofs bore the certification of the several officers before they were taken that the oath was administered).

173            Testimony of WALTER O. ALLEN, witness in  
 behalf of complainant.

Direct Examination.

By Mr. Mills:

1. Where do you live?
- A. Leesville, Vernon Parish.
2. How long have you lived there?
- A. Since 1889.
3. Do you know Joe J. Hicks?
- A. Yes, sir.
4. How long have you known him?
- A. Twelve or fourteen years.
5. Are you related to him?
- A. By marriage; he is my brother-in-law.
6. Do you know where Mr. Hicks was living during summer  
 and fall of '98?
- A. In Leesville.
7. Was Mr. Hicks married at that time?
- A. Yes, sir.
8. Did he have a family?
- A. Yes, sir.
9. How large?
- A. Four children.
10. Did his family live with him at Leesville?
- A. Yes, sir.
11. From that time on, how long did he continue to live  
 there?
- A. Up to the present time.
12. Has he ever resided anywhere else that you know of?
- A. No, sir; not that I know of.
13. Do you know of your own knowledge whether or not  
 any time in 1898 or 1899 Mr. Hicks made any homestead entry  
 in Vernon Parish?
- A. Yes, sir.
14. Do you know whether he made more than one?
- A. Only one homestead.
15. Do you remember the description of that  
 174        land?
- A. Northeast quarter section (I don't remember  
 the section) Township 2, Range 5 West.

16. Did you make any homestead entry, yourself?

A. Yes, sir; adjoining that. The southeast quarter of same section. His was the northeast quarter.

17. Do you remember when your entry was made?

A. No; I don't remember now.

18. Did you and he make your entries together or at the same time?

A. He made his a little before I did, I believe.

19. Do you remember when you made yours? Approximate the month and year.

A. Some time in 1898, I believe; I don't remember exactly.

20. Do you remember what improvements Mr. Hicks put on his homestead?

A. He and I made a combination house—a double house—on the dividing line, one-half of the house on each side.

21. What other improvements were made on his side, if any?

A. We made an entire enclosure of about two acres—that is, half on each side of the dividing line.

22. Did Mr. Hicks ever plant any crop that you know of?

A. Yes; some peas were planted on it.

23. Did he plant that lot of peas, himself, or hire it done?

A. I could not say now; I don't think he planted them.

24. Do you know whether this crop ever matured and was harvested or not?

A. It never matured to make enough for the seed that was put in the ground.

25. Was it cultivated in any way or any attention paid to it after planting?

A. Not to amount to anything.

26. How often did Mr. Hicks, to your knowledge, go from his home in Leesville to this land?

A. At intervals of three, four, five or six months.

27. Did he take his family with him on these trips?

A. I never saw any of his family there.

28. How long would he stay upon the land on the occasion of these periodical visits?

A. Twelve to thirty-six hours. Sometimes that included the entire time, coming and going.

29. Did you ever know Mr. Hicks to stay upon this land for any longer period than that?

A. No longer than twelve or fourteen hours that we would

be together. He would stay overnight from about five in the evening until early next morning.

30. Then, the only actual length of time that you ever knew Mr. Hicks to be on that land was a periodical visit every three, four, five or six months, and he would then stay over night?

(Objected to as leading).

A. Yes, sir; and he would stay over night.

#### Cross-Examination.

By Mr. Monroe:

1. You say you and Mr. Hicks had a double house, what is commonly called a double-pen?

A. Yes, sir.

2. Any doors or windows?

A. Doors, but not the windows.

3. Was the enclosure actually fenced in?

A. Yes, sir.

4. Any out-buildings?

A. A stable.

5. Did you have any orchard trees planted?

A. Yes, sir.

6. What else did you have planted in the enclosure besides peas and trees?

A. A little corn at one time.

7. Were a few barrels of corn made in the enclosure?

A. A few barrels? I never saw it.

176 8. Mr. Hicks stated that there were a few barrels of corn made.

A. I didn't see any.

9. Mr. Hicks stated that you and your wife started out to live in that double-pen house and that your wife was taken sick?

A. That is correct.

10. To what extent [extent] did you live in that double-pen house?

(Objected to by counsel for government, on the ground that any residence by Mr. Allen on his homestead is irrelevant in this case).

A. At about the same intervals as in Mr. Hicks' case—two or three or four months apart; I would stop over a night or a day.

11. Did you, personally, do any work in the field inside that enclosure?

A. I never did; that is, in the fields.

12. What work did you do there?

A. I planted the trees, built fences and out-houses.

13. Where were these out-houses; on your side or Mr. Hicks' side?

A. On my side of the line.

14. When you made your commutation proofs, Mr. Allen, at that time didn't you and Mr. Hicks verily believe that you had complied in all respects with the law?

(Objected to by government as to what Mr. Hicks believed, on the ground that it could be only hearsay).

A. Yes, sir; that is my impression. I don't know what Mr. Hicks thought.

15. Did any of your family or Mr. Hicks family remain for any length of time in that house besides you and Mr. Hicks?

A. My wife and child did.

16. How long did they stay?

A. One night and part of the next day, one time.

17. Where was the spring in that neighborhood?

A. A little branch rang [ran] through the adjoining forty on the west.

18. Was there a spring on Mr. Hicks' forty?

177 A. No, on the opposite side; on the north side.

19. If he testified that there was a spring there would you contradict it?

A. If there was it was in the north side of the forty. I was on the south side and it was a half mile away and I never went to it if there one there.

In this case counsel for government offers a copy of the records of the general land office of the Department of the Interior, showing the various papers filed and issued in the matter of the homestead entry of J. J. Hicks, #21,228, and rests his case.

In this case counsel for defendant offers the patent marked "W-B Co. P." and rests his case.

178 GREEN FOSHEE, witness in behalf of complainant, being duly sworn, testified as follows:

(Counsel for complainant asks that the testimony of Mr. Foshee be inserted in each of the nine cases.)

(Counsel for defendant objects on the ground of irrelevancy.)

(Mills:)

1. Where do you live?

A. Vernon Parish.

2. How long have you lived there?

A. Nearly all my life; a long time.

3. Near what towns do you live?

A. Pitkin.

4. How long have you lived at Pitkin?

A. For six or seven years, exception I have lived in the neighborhood of Pitkin ever since I was seven or eight years old.

5. Did you know Nat Wazey?

A. Yes, sir.

Q. Did you know the Widow Graham?

A. Yes, sir.

7. Do you know of your own knowledge whether Nat Wazey ever bought any improvements on land from the Widow Graham?

A. Yes, sir.

8. When was that?

A. I could not say right positively; about 7 or 8 years ago to the best of my knowledge. I can't say what date.

9. Do you know where the Widow Graham lived at the time?

A. Yes, sir.

10. Where?

A. At the time he bought her improvements she was living on a creek that we called Ten-Mile.

11. What section?

A. I couldn't tell you what section.

12. Were you present when Wazey bought her out?

A. I was present when he made a contract with her to buy the property from her.

13. Did he make any statements at the time as to why he wanted to buy the improvements?

(Objected to as hearsay.)

A. I can't hardly say that I recollect.

14. Did he at any time ever tell you why he wanted those improvements?

(Objected to as hearsay.)

A. Yes, sir.

15. What did he tell you?

A. That he had homesteaded the place and he didn't want to take it away from her without paying her for it.

16. Then, from his statements you were led to believe that he had already made a homestead entry on the land before he bought her improvements?

(Objected as leading.)

A. I think he had; yes, sir.

17. After this purchase did the Widow Graham continue to live there or move off?

A. She moved off some time after. I don't remember just how long. Some two or three months.

18. After she moved off of this land did anyone else move on that you know of?

A. No, sir.

19. At the time that Nat Wazey purchased these improvements from Mrs. Graham where was he living?

A. Well, I couldn't hardly tell you. He was a timber man and he was over the country in different places at that time.

20. Do you know where his home was at that time?

A. No, sir; I do not.

21. Do you know of any place in that country that he lived or had a home about that time or short time afterwards?

A. Afterwards I did.

22. How long afterwards?

180 A. I can't say positively, but to the best of my knowledge over 4 mos.



23. During the 4 months after purchasing these improvements from Mrs. Graham where was he living?

A. At that time he moved his family near a little place called Pitkin now.

24. What was it called then?

A. Weldon's place at that time.

25. How long did he live there?

A. I am unable to say.

26. Estimate it, please.

A. I don't think he stayed over two or three months.

27. How far was this place from the Widow Graham's?

A. I always called it 12 miles. I don't think it was quite that far.

28. Where did Wasey live after leaving Weldon's place?

A. He bought improvements from Dr. Stallsby on a place about 2 or 2-1/2 miles east of the place he was living at that time.

29. After buying this place did he move there and live there?

A. Yes, sir.

30. How long did he live there?

A. I can't say; I don't remember.

31. A day or a year?

A. A couple of years; maybe longer. He was there as long as I was in that section of the country.

32. Did you ever know him to live at any other place in that country except on the Weldon place and on this place he got from Stallsby?

A. No, sir. Of course, he was away from there half the time because he was working for some other parties and he was at home very little himself, but his family was there most of the time.

33. How far was this place he bought from Stallsby from the property on which was located these improvements bought from Mrs. Graham?

A. It would have been eight or nine miles. We called the distance over the road, I couldn't say exactly.

34. Do you know of your own knowledge or from statements made by Wasey whether he ever made a homestead entry on this land on which were situated the improvements bought from Mrs. Graham?

181           A. Yes, sir; I think he did. He told me he did.  
               35. Do you know whether he ever commuted that  
               entry or took any steps to prove it?

A. I did not at that particular time.

36. Do you now?

A. Yes, sir.

37. How do you know it now?

A. I know it now by showing that I was a witness and I  
 was arrested for being a witness on that homestead.

38. Were you a witness on his final proving up and com-  
 mutation of that land?

A. If I was I didn't know it.

39. Have you any recollection of being questioned by any  
 one as to the residence on or cultivation of this homestead of  
 Nat Wazey's?

A. I have not.

40. Have you any recollection of taking any oath or sign-  
 ing any paper in regard to it?

A. I didn't take any oath, but I cannot say I did not sign  
 any paper, because Nat would come to me quite often to sign  
 papers for him.

41. And did you sign without reading them or knowing  
 what they were?

A. Yes, sir; most of the time. I can't read much. I haven't  
 much education. I signed all that I thought were land deeds.  
 I ran a little store and he would bring parties there and ask  
 me to sign paper and I didn't see any harm in it and would  
 always sign the papers he asked me to sign.

42. What statements did he make to you about what these  
 papers were and why he wanted you to sign them?

A. I signed a good many where he just opened the paper  
 and said: "Sign on this line," and I have heard other parties  
 talk about deeds and heard agreements between them.

43. Did Mr. Wazey ever state to you or in your hearing  
 whether or not he was having deeds made to himself or for  
 other parties or firms?

(Objected to as hearsay.)

A. People he was working for.

44. Who was he working for?

(Objected to as hearsay.)

A. Wright-Blodgett Company.

45. How do you know that?

A. Why, I know, or think I do, because there were some of them in there and he always told me he was working for them, and I saw them all in there quite often.

46. Do you know Mr. Michael Kelly here?

A. Yes, sir.

47. Was he ever in your vicinity?

182 A. Yes, sir.

48. Was he there anywhere around the time of this Wazey homestead entry?

A. I think he was.

49. Do you know what Kelly was doing there in that vicinity?

A. They were took to be timber people.

50. Did you ever see Kelly with Wazey?

(Objected to as hearsay.)

A. Yes, sir.

51. Often?

A. I couldn't say anything about the times; several times.

52. When Mr. Kelly would go into that country with whom would he stay?

(Objected to as hearsay.)

A. Mr. Wazey.

53. How do you know that?

A. I have seen him there and have heard Wazey tell about his being there when I have not seen him.

(Objected to as hearsay.)

54. Did you ever sign any papers for Kelly?

A. I don't remember that I ever did. I wouldn't say that I did or didn't.

55. Was Mr. Kelly ever around when you signed deeds or papers for Wazey?

A. I can't undertake to answer that question.

56. When Mr. Kelly was in your vicinity did you ever see him going around or having any business dealings with anyone but Nat Wazey?

A. I don't think I can give a correct answer to that. I have seen Mr. Kelly talking with other people, but whether it was on business or not I don't know that I could hardly be able to say.

57. Did you ever hear of any conversations in regard to land matters between Kelly and Wazey?

(Objected to as hearsay.)

A. I don't know that I ever did. I always thought that they seemed to be pretty particular in their way of doing business.

(Objected to as hearsay.)

58. Did you ever hear any conversations between them in regard to land matters?

A. I couldn't say positively. Mr. Kelly always  
183 seemed to be pretty particular about talking to anyone. I never heard him get out and express himself. I never heard him, while in his presence, talking about his business. He was always joking, or something like that.

59. Did you ever hear Nat Wazey make any statement or say anything in regard to what he intended to do with his homestead after proving it up?

A. No, sir.

(Stenographer's Note: It was just at this point in Mr. Foshee's testimony that Mr. Mills instructed me to insert his (Mr. Foshee's) testimony in all the cases, and Mr. Monroe objected on ground of irrelevancy. See page 1 of this testimony.)

#### Cross-Examination.

By Mr. Monroe:

1. Do you know any relatives of Nat Wazey by the name of Clingo?

A. No, sir.

2. What brothers or sisters did he have at his death?

A. I don't know whether he left any sisters or not; he left a brother.

3. What is his name?

A. John.

4. Any other brother?

A. I think he had another; I don't know his name.

5. Is his mother living?

A. I don't know.

6. Is M. Wazey living?

A. I don't know.

7. Is George Wazey living?

A. I don't know him.

8. Do you know whether Nat Wazey bought more than one set of improvements from Mrs. Graham or not?

A. I don't know.

9. Do you know of your own knowledge?

A. If she had but one I don't know it.

10. You don't know whether she had or not?

A. No, sir; if she had but the one I don't know it.

11. Are you prepared to swear that you did not sign your name on the commutation proof of Mr. Wazey?

A. No, sir.

12. I hand you a copy of the Times-Demoerats of Feb. 26th. Please read the headlines of the first column.

A. I don't know that I can.

13. Well, try it.

A. I can't read it good enough.

14. What is on the first line?

A. Why that is "Navy Yard Commission," or something like that.

15. Second line?

A. "President Appoints Men to Investigate Conditions," or something like that.

16. The next line?

A. "He disregards and Defies Congress by This Act."

17. On the next line?

A. "Roosevelt Determines to Discontinue Southern Yards."

18. Will you take that sheet of paper and write your name and address on it the best you can?

A. Yes, sir (which he does).

19. How do you spell "land"?

A. I am not very good on spelling, but I reckon l-a-n-d.

20. How do you spell "house"?

A. H-o-u-s-e.

21. How do you spell "improvements"?

A. I-m-p-r-o-v-m-e-n-t-s.

22. How do you spell "crop"?

A. C-r-o-p.

23. How do you spell "clear"?

A. C-l-e-a-r-e.

24. How do you spell "season."

A. I don't know that I can spell it.

25. Try it.

A. S-e-a-s-e-n.

26. How do you spell "resience"?

A. R-e-s-i-d-e-n-c-e.

27. How do you spell "cultivated"?

A. C-u-l-t-i-v-a-t.

28. Mr. Foshee, can you swear positively to it as  
185 a fact that you ever saw Mr. Kelly in your neighborhood between Feb. 9, 1900, and May 14, 1901?

A. No, sir; I cannot remember what dates he was there.  
I saw him several times, but I cannot say what dates.

29. Can you swear positively to it as a fact where Nat Wazey was living between Feb. 9, 1900, and May 14, 1901?

A. As to the times, I cannot tell you just exactly what date. I cannot remember dates. As I have stated, Mr. Wazey was all over the country and I cannot say where he was lots of the time.

186 ED DYAL, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Where do you live, Ed?

A. Elizabeth, on the Santa Fe Railroad.

2. What parish?

A. Calcasieu.

3. In Louisiana?

A. Yes, sir.

3. How long have you lived there?

- A. About a year.
5. Where did you live before that?
- A. In Rapides Parish, about ten miles north of Elizabeth.
6. How long did you live there?
- A. Around the place about ten years. I was born and raised there; not over three or four miles from there.
7. How far is that from Brushy Creek?
- A. About eight miles.
8. What do you do in that country?
- A. Mostly farming. I've been working for the Industrial Co. as laborer the last two years.
9. Did you ever know Nat Wazey?
- A. Yes, sir.
10. How long ago did you first become acquainted with him?
- A. I don't remember. It has been quite a little while. About seven or eight years ago; maybe longer. I know it's been that long.
11. How long had he been in that country before you met him?
- A. I don't remember; I don't think he had been there long.
12. Where was he living at the time you met him?
- A. I think he was there a right smart little while before he moved his family there and was staying about and I met him several times, but the first place I knew him to live was on Brushy Creek near Pitkin.
13. Were you ever on his place there?
- A. Yes, sir.
14. Did he have a home there?
- 187 A. Yes, sir; I suppose so.
15. You saw it?
- A. Yes, sir.
16. Then you know it?
- A. Yes, sir; I seen him and his family living there, claimin' it to be his home.
17. How long did he live there to your knowledge?
- A. Something like two year.
18. Do you know whether or not Nat Wazey ever made a homestead entry in that country?
- A. No, sir; I don't know any more than he told me he did.
19. Did he tell you where it was?

A. Yes, sir; on the Widow Graham's place; that was his homestead.

20. Do you know he made that entry?

A. No, sir.

21. Do you know whether he ever commuted it?

A. No, sir.

22. Did he ever come to you and ask that you be one of the witnesses?

A. No, sir.

23. Did he ever come to you and state that he was about to prove up his entry and was about to commute it?

A. No, sir; not that I recollect.

24. Ever come to you with any paper and tell you that this paper was to be used in proof upon his commuting his homestead entry and that he wanted you to sign it as a witness?

(Objected to as leading.)

A. If he did I don't remember it.

25. Did you ever sign any paper at all at his request?

A. I might have, but if I did I don't remember it. I ain't got any education at all and I can't sign my name, but probably I have signed papers for him.

26. How could you sign papers if you cannot sign your name?

A. Whenever I sign a paper someone else signs it and I touch the pen.

27. Ed, do you know this gentleman sitting here?

188 A. Yes, sir; I think I do. I think I have been informed his name is Mr. Kelly.

28. Did you ever see Mr. Kelly in the vicinity of Nat Wazey's homestead at Brushy Creek?

A. I don't remember that I have, but it seems I have met him betwixt where Mr. Wazey lived and Glenmora in a hack. I am not positive.

29. Anybody else in the hack with him?

A. If it was I don't remember.

30. Did you ever see Mr. Kelly in that vicinity or country on any other occasion?

A. No, sir; I don't think I have.

(At this point counsel for government asks that this testimony be added to the testimony in all the cases.)



(Subject to the right of counsel for defendant to object to it, and for other causes.)

Cross-Examination.

By Mr. Monroe:

1. Can you swear positively of your own knowledge that you did not sign Nat Waezy's commutation proof?

A. Yes, sir; if I did I don't know anything about it.

2. You don't know or don't remember?

A. If I signed it I didn't know what I was signing.

3. Have you had any conversation with any official of the government relative to your testimony here?

A. Yes, sir; I don't suppose that I have except with this gentleman.

4. No one else but Mr. Mills?

A. Yes, sir; I have with Mr. Elstner.

5. Did you ever speak to Mr. Goleman about it?

A. No, sir.

6. You never spoke to any government inspector out in that country?

A. No, sir.

7. Any U. S. commissioner?

A. I could have talked with some of those men and not have known it, but not to know it.

8. Aren't you testifying here under the understanding that if you do give your testimony here there will be no prosecution against you?

A. No, sir; it is not.

9. No intimation of that kind made to you?

A. No, sir.

10. Ed, have you ever been arrested?

189 A. Yes, sir.

11. For what?

A. I was arrested on the charge of being a witness on the Waezy homestead.

12. What happened to that case?

A. I don't know; I gave bond and was put in jail.

13. You was charged with perjury?

A. I don't know what I was charged with.

14. At the time you gave bond did you have any talk with any government official about testifying in that case?

A. If I did I don't remember it.

15. Was it intimated to you that if you would testify in that case that the charge against you would be dropped?

A. No, sir.

16. Was that ever been intimated to you or told to you at any time?

A. I don't think it has.

17. Have you ever been arrested at any other time?

A. No, sir.

18. Do you mean to tell me, Ed Dyal, that you have never been in the penitentiary for the killing of Sam Buxton?

(Objected to on the ground that it is entirely irrelevant and has no tendency to prove or disprove any of the issues in this case.)

(Counsel for defendant suggested that it might have some bearing on the credibility of the witness.)

A. No, sir; not for the killing of Sam Buxton. I thought you meant had I been arrested since that arrest of this land proof. I have been arrested more than twice. I was put in the penitentiary; there was some people's sheep was killed and put in the creek above where me and my father lived and I was put in the penitentiary for that, and I had been arrested for the killing of Sam Buxton, too.)

19. How long a time did you serve in the penitentiary?

A. Nine months.

20. In what year was that?

A. I don't remember; couldn't tell you how long it has been.

21. Was that the only time you have ever been in jail?

A. No, sir; I have been in jail before I was sentenced for the sheep. The first time I was ever in jail was for the killing of Buxton.

22. You were indicted and convicted?

A. I was not convicted. There was a warrant sworn out and I was arrested and put in jail.

23. What was ever done in connection with that matter?

A. The case was nolleprossed and put out. Pretty certain they never had any trial.

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24. You don't know positively whether you were tried and convicted?

A. No, sir; not convicted.

25. What about Pink Buxton?

A. I was only jailed for that. Just accused of being an accessory in the killing.

26. Have you ever been in jail besides the times you have mentioned?

A. No, sir; I don't think I have.

27. Have you ever been arrested besides those times?

A. No, sir; I don't think so.

28. Do you mean you have been in jail so many times you cannot remember how many?

A. I think I have been in mail [jail] five or six times, but all on those cases.

29. Have you ever been indicted for perjury?

A. If I have I don't know it.

30. You cannot swear you have not?

A. No, sir; I cannot.

#### Re-examination.

Mr. Mills:

1. How long prior to the time Nat Wazey came into the country was it that you had this trouble with the killing of Buxtons?

A. I don't remember how long, but it must have been something like seven or eight years.

2. How long prior to the time he came into the country was it that you were in the penitentiary on account of these sheep?

A. Must have been about—well, anyways six or seven years; something like that. I can't keep up with the dates.

3. Where were you when you were arrested on these charges?

A. In the same neighborhood.

4. These facts are generally known in all that community?

A. Yes, sir.

#### Recross-Examination.

Mr. Monroe:

1. You remember the yellow fever of 1898?

A. No, sir; I don't remember it.

191 2. Have you any way of fixing when you were in the penitentiary?

A. No, sir; I don't know that I have.

3. How old are you?

A. About 35 or 36 years old.

4. How old were you when you were sent to the penitentiary?

A. I couldn't tell you.

5. You were a grown man?

A. I was just about grown.

6. You had voted already?

A. No, sir; if I had ever voted I don't know it.

7. Over twenty-one?

A. No, sir; I couldn't have been over twenty-one, but somewhere along there.

8. Was the time you were in the penitentiary before the killing of Buxton or afterwards?

A. Afterwards.

192 THOS. C. WINGATE, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Where did you live in March, 1901?

A. In the Town of Leesville, Vernon Parish, La.

2. What was your [your] occupation?

A. At that time I was dealing in timber land principally; buying and selling timber and estimating land.

3. Were you working for any particular company?

A. I could not say that I was. I bought some land for several different companies, but I cannot recall to memory whether I was employed steadily by any one firm.

4. Did you buy and [any] land about that time for the Wright-Blodgett Co.?

A. Well, I bought some for them. I closed up some trades for them, but I cannot say whether it was just in March, 1901, or not. We had so many transactions with people at that time that I cannot tell whether it was in March, 1901, March, 1900, or March, 1899.

5. Do you remember the first time you ever did any work for W.-B. Co.?

A. I can't say that I remember unless I could see the deeds or papers or something to refresh my memory; I could not state positively just when I did the first work for them.

6. In about how many different transactions were you employed by them?

A. I couldn't tell you.

7. Many or few?

A. Very few.

8. What was the nature of these transactions you managed for them? Explain fully as to your dealings, if you were paid for them, by whom and how much?

A. Most of the transactions with the company were in this way: parties would come and want to sell certain land to me. I would not have any money to buy it, and I would know it was lying the Wright-Blodgett territory and would write Mr. Kelly and tell him the description of the land and who offered it and he would write to me and state if he would want to take it and he would give me instructions sometimes to close the trade out on certain pieces of land. He would pay me my commission.

9. Then in all the transactions you had for the company you simply acted as middle man and referred all matters for definite decision to Mr. Kelly?

A. That is correct. I had no authority to cruise the timber or anything of that sort. I would submit the matter to him and he would notify me if he wanted to purchase the property.

10. Do you know of anyone else in that town or  
193 community who was employed by the Wright  
Blodgett Co. in any capacity?

A. Well, I don't know. I think Mr. Boyd and Mr. Wasey and Mr. Dickens.

11. What Boyd was that?

A. Jas. M. Boyd.

12. What made you think that Jas. M. Boyd was employed by Wright-Blodgett Co.?

A. I don't think that at that time he ever told me he was employed for the company, but he has frequently told me in the last few years about doing certain things for Mr. Kelly—go and meet him on business somewhere, and I suppose it was on land matters.

13. Was Boyd also U. S. commissioner there at that time?

A. I don't know whether he was at that time or not, and I

don't know even the date when he was commissioner. I know, however, that he was U. S. commissioner at one time.

14. Examine this copy of deed from Jas. D. Stallsby to Wright-Blodgett Co., dated March 26, 1901, and state if that was one of the transactions in which you represented the Wright-Blodgett Co.?

A. I suppose I must have closed this transaction.

15. Does not your name appear on this deed as witness?

A. It does.

16. What name also appears on that deed?

A. Jas. M. Boyd.

17. The party you have been speaking about?

A. Yes, sir; it is.

18. Have you any recollection of how the consideration was paid in this case?

A. No, sir; I cannot, and could not unless I could see the original deed. The reason why I stated a moment ago that I must have closed up this transaction was for the reason that only this morning Mr. Stallsby told me that he sold this land through me to the Wright-Blodgett Co. I had entirely forgotten the transaction.

19. Mr. Wingate, did you ever in this case, or any other case, buy lands outright for yourself and then turn around and sell them to the Wright-Blodgett Co., or were deeds made direct to the Wright Blodgett Co. and paid for by them?

A. I am sure that I sold Wright-Blodgett Co. some pieces of land that I acquired in my own name and with my own funds.

20. If the papers in this case show that this piece of property transferred from Mr. Hester to Mr. Stallsby to the Wright-Blodgett Co. could you state whether or not you paid for these lands with your own funds or not?

(Objected to as leading.)

A. I have no recollection of paying Mr. Hester nor Stallsby for this tract of land with my own funds.

21. If you did advance the money to Mr. Stallsby  
194 to pay for this tract of land do you know whether or not you were reimbursed by Wright-Blodgett Co.?

(Objected to as leading, calling for the opinion of the witness and suggestive of the answer.)

A. I think I can answer that positively because the Wright-Blodgett does not owe me a cent, and if I ever was advanced anything on their account they reimbursed me.

22. State whether or not it was your custom in these matters after you had been notified by Kelly and authorized to go ahead and make the trade for the company, did you not on some occasions advance the money or give your personal check for the payment of these lands and afterwards be reimbursed by the Wright-Blodgett Company?

(Objected to as irrelevant.)

A. I generally had authority from Mr. Kelly to make draft on him through the bank to pay for the few purchases I made for him. I may have, on some few occasions, put up the money myself and afterwards Mr. Kelly would reimburse me.

23. Mr. Wingate, did you ever purchase for your own use and benefit the property described in this deed from Stallsby to Wright-Blodgett Co.?

A. I did not.

24. Did you know Nat Wasey?

A. I did.

25. Did you ever have any conversation with him in regard to the business of the Wright-Blodgett Co.?

(Objected to as hearsay.)

A. I have.

26. Do you know that he was employed by the Wright-Blodgett Company?

(Objected to as leading.)

A. Yes, sir; he was their agent.

27. How do you know that?

A. Well, from transactions that I would assist him to make, deeds that I would prepare for him and transactions, sales, etc., I would see him make; that is, purchases of property; I supposed by that he was their agent. I would see him buy land and pay for it.

28. That land was for whom?

A. For the Wright-Blodgett Co.

29. You stated that Mr. Dickens was employed as agent for the Wright-Blodgett Co. On what knowledge do you base that statement?

A. Mr. Dickens was employed at one time by the Wright-Blodgett Co.

30. How do you know that?

A. From correspondence and conversations had with him and business transactions with him. Mr. Dickens was Mr. Kelly's, I would term it, private secretary. He was  
195 stationed at Lake Charles, in the office, kept his books, made his maps, looked after his correspondence. If Mr. Dickens cruised timber or went into the woods and purchased and purchased land I know absolutely nothing about it.

31. In the absence of Kelly who was in charge, in authority, in Lake Charles for W-B Co. during the time Mr. Dickens was employed by them?

A. Mr. Dickens; Pugo & Moss was their counsel. Mr. Dickens would confer with them.

32. Is there any way you can fix the time of employment of Mr. Dickens?

A. No way at all, unless I can see some old papers.

33. Do you know who succeeded him in the office of Wright-Blodgett Co.?

A. I would not be positive, but I think Foster did; Ben Foster, I believe. I am pretty sure that he succeeded Dickens.

34. For how long a time prior to the employment of Foster do you know that Dickens was employed in the office of Wright-Blodgett Co.?

A. I can't say; I don't know. I really don't know whether one year, six months, two years, eighteen months; I couldn't say with any reasonable degree of certainty.

35. Do you know of anyone occupying Mr. Dicken's position prior to his employment?

A. I cannot remember of anyone.

36. Then Mr. Dickens is the earliest office man for Wright-Blodgett Co. you can remember?

A. To my knowledge he was.

37. Can you state in what year it was you first did work for Wright-Blodgett Co. and kept in touch with their office at Lake Charles?

A. To the best of my recollection it was about 1901, or



1900; maybe a little before, or a little after. I cannot possibly remember these little details.

38. In cases where you purchased land upon a mere receiver's receipt for the Wright-Blodgett Co. had you any instructions from them of any kind as to whether you should make any investigation to find out if the law had been complied with by the entryman?

A. No, sir. Mr. Kelly would require me to send him a description of the land and the man's name.

39. Was that all he would require?

A. He would be the judge of the title and the quantity of timber on the land and if the title was not good he would say it was no good and the transaction would be closed up, and if the timber was no good on the land he would state that the timber was not such timber land as he required or cared to buy. He never gave me any instructions as to titles. He was judge of the title and the timber.

40. Did Mr. Kelly ever come personally to Leesville?

A. Yes, sir.

41. Often?

A. Yes, sir.

42. Would Mr. Dickens ever come personally to  
196 Leesville?

A. Yes, quite frequently.

43. Have you any knowledge of the scope of the employment of Nat Wazey by the Wright-Blodgett Co.; his duties and authority?

(Objection made to any testimony this witness may give not derived from any personal knowledge but from hearsay.)

A. Mr. Wasey was employed to look after the land of the Wright-Blodgett Co., as I understand it; to purchase timber, to prevent trespass on their lands.

44. Where was he located?

A. Located the majority of the time in the neighborhood of Sigler or Slabtown.

45. You think he was their field man?

(Objected to as leading.)

A. Yes, sir; I think so.

(Stenographer's Note: At this point Mr. Mills instructed me to insert all of Mr. Wingate's testimony in each of the several cases.)

### Cross-Examination.

Monroe:

1. You never knew or heard of Jim Boyd being in the employ of Wright-Blodgett Co. until after Nat Wazey went crazy in 1904, did you?

A. No, sir. That was the first I knew of his employment. If he was employed before that time I have no knowledge of it.

2. In this Stallsby transaction, relative to which you were examined, will you look at two letter, both dated March 24, 1901, which I hand you and ask if you recognize them?

A. I wrote this letter on March 24, 1901, which is signed by me.

3. Did you make the penciled memoranda on the letter signed by Stallsby?

A. I did.

4. Since reading those letter is your memory refreshed at all in regard to that transaction?

A. Yes, sir; I remember that sale was made.

5. In that transactions, I take it, you were acting in the capacity of a land broker?

A. That was all; I got 25 cents an acre commission. I brought the seller and purchaser together.

6. They knew nothing of each other prior to that time?

A. Yes, sir.

7. It was your service in making them acquainted with each other that you received 25 cents an acre?

A. Yes, sir.

197      These letters filed and marked "W-B Co. Hester 1" and W-B Co. Hester 2.")

8. You say at the time this sale was made you knew nothing about the Hester claim being a homestead case at all?

9. And that impression was conveyed to the Wright-Blodgett Company?

A. The letter shows what I conveyed to them.

10. Mr. Wingate, had you any personal knowledge other

than what you heard from people as to what the employment of Mr. Wasey was by the Wright-Blodgett Co.?

A. Well, I will answer that of course I was bound to know he was Wright-Blodgett's agent, because I had business with them, and he had business with them.

11. You knew he had business with them to a certain extent; but do you know his authority?

A. That I know nothing about; he might have been without certain powers that I thought he had.

12. That same condition would be applicable to Mr. Dickens, would it not? You don't know of your own knowledge what his authority and power was?

A. I don't know the extent of his powers; I knew he transacted business for them, but I don't know the extent of his authority.

13. And I take it that the business Wasey did that you knew positively about was in connection with the closing up of deals for the purchase of land—that is to say, when the actual deed was being signed?

A. Yes, sir; I saw money paid over by him.

14. You knew that it was the custom of Wright-Blodgett Co., as Mr. Moss of Pugo & Moss testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; they were Mr. Kelly's instructions. He told me that at any time he should happen to be away that if I had an abstract made and sent to Pugo & Moss and if Pugo & Moss passed on the abstract the draft would be paid. Pugo & Moss passed on all their abstracts.

15. They didn't purchase any land until Pugo & Moss approved the title?

A. That was my understanding.

16. You know also that Dickens defaulted and left the country suddenly while in the employ of Wright-Blodgett Co.?

(Objected on the ground of irrelevancy.)

A. I don't know; I have heard that.

17. You know that they hunted for him without being able to find him?

(Objected to the ground of irrelevancy.)

A. I have heard he was hunted for; I don't know that he was.

18. Didn't persons from Wright-Blodgett Co. ask if you knew where he was?

A. Mr. Kelly told me he was trying to find him, but had not been able to locate him.

19. He never has been able to locate him?

A. Not to my knowledge.

20. Mr. Foster stated while on the stand that when he left the employ of Wright-Blodgett Co. he was succeeded by Mr. Livingstone. Is that correct?

A. I never had any business with Livingstone. I have heard of Livingstone being with Wright-Blodgett Co., but I don't know anything about him.

21. What I want to find out is whether Livingstone was employed before or after Foster?

A. He was employed after. I don't know nothing about the employment.

22. You know, Mr. Wingate, as a timber man, do you not, that it is a custom with all large timber concerns to have an estimate of a great tract of land made by timber cruisers, as J. D. Lacy & Co., and after having an estimate made they buy on the strength of that estimate, relying on that estimate as to the statement of the amount of timber on that land?

(Objected to on the ground of irrelevancy and for the reason that the custom of other companies and the transactions of their business has nothing to do with this case.)

A. The Wright-Blodgett Co. had their own cruise. It was my understanding and my observation that the majority of large timber holders that move into a territory for the purpose of acquiring land generally have their own employes to cruise the timber and it is customary for them to cruise all the timber in the community lying contiguous and that they use this information from time to time on a basis of value.

23. They come in and cruise all the timber in that locality?

A. Yes, sir; it saves money and time.

24. All cruises are done at the same time when they come into the country?

A. Yes, sir.

## Re-examination.

Mills:

1. You state that you did not know that the Stallsby case was based on homestead entry on which receiver's receipt alone had been issued?

A. I got the impression some way that that was some old claim.

2. You would not pass upon titles in these cases?

A. No, sir.

3. You state that before making purchase the Wright-Blodgett Company required an abstract and submitted it to their attorneys?

A. Yes, sir; in all the deeds I closed up for Mr. Kelly it was his instructions that I make abstract of title, or cause the same to be done; that I make draft on him through the First National Bank of Lake Charles, or the Calcasieu National Bank, and send the abstract of title to Pugo & Moss; that if Pugo & Moss found the title to be correct they would authorize the bank to honor the draft.

4. Every abstract was made in this case and examined in a case in which the title was based on a receiver's receipt the abstract would show that?

A. Yes, sir.

5. Then, if the company pursued in this case the custom which you have outlined they would know full well before they made this purchase that this title was based on a receiver's certificate.

A. The abstract would show the receivers' certificate.

6. Mr. Monroe has asked you about the disappearance and the default of Dickens and whether or not Kelly came and made inquiries about it. Who do you consider the best witness as to those facts?

A. Mr. Kelly is the best witness.

## Recross-Examination.

Monroe:

1. Don't you remember that Mr. Kelly was not in this country, that he was out on the Pacific coast at the time of Dicken's default, and it was only a great deal later that he came down and inquired about him?

A. Yes, sir; I heard Kelly was absent at the time.

2. Then Kelly would have no personal knowledge about it?

A. No, sir.

3. Did Pugo & Moss wire you about Dickens at the time?

A. I believe they did. The [they] notified me that he had skipped out and was no longer authorized to attend to their business.

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200 (To be inserted at end of each case.)

### AGREEMENT.

It is agreed by the counsel for the government and counsel for defendant that all testimony shall be taken at the present sitting, except otherwise agreed upon; that the cases shall be argued and submitted at the May term of court in Lake Charles, and that thereafter the Court may render judgment either in vacation or term time as best suits its convenience, it being understood that in cases of appeal either side will accept service.

It is admitted that both the government and the defendants in these cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him.

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201 United States District Court, Western District of Louisiana.

United States of America

vs. No. 365. In Equity.

Samuel S. Akin, Jr., and the Wright-Blodgett Company.

### TESTIMONY OF SAMUEL S. AKIN, JR.

202 United States

vs.

S. S. Aikin, Jr., & Wright-Blodgett Company.

Evidence taken before John F. Slattery, special examiner,

on February 25th, 1910. Evidence reported by R. B. Cook, stenographer.

Wright-Blodgett Company Represented by J. Blane Monroe,  
of Hall, Monroe & ———.

Government represented by E. P. Mills, assistant attorney.

Testimony taken subject to same reservations heretofore that all objections are to be made at the time that same is offered in court.

S. S. AKIN, JR., witness for the government, being first duly sworn, testified as follows:

On direct examination he said:

Q. How old are you?

A. I will be forty my next birthday. I am thirty-nine years old now.

Q. Where do you live?

A. At Lloyd, Rapides Parish, Louisiana.

Q. Mr. Akin, where did you live in 1899?

A. I lived at Lloyd.

Q. At the same place?

A. Yes, sir.

Q. Did you at about that time make a homestead entry on any land?

A. Yes, sir.

Q. Where was that land located—where was that homestead located?

A. In Vernon Parish.

Q. Do you remember the description, the numbers of the land?

A. No, sir; I cannot remember then. I can get the number.

Q. Do you know what section it was in?

A. It was in Section Five.

Q. Are you sure of that?

203 A. Not absolutely.

Q. Do you know what township it was in?

A. Township Two, I think.

Q. Do you know what part of the section it was?

A. The south half of the north half of the section, as well as I remember.

Q. You are not positive about that?

A. No, sir.

Q. Did you make more than one homestead entry?

A. No, sir.

Q. Then if the records of the land office show the homestead entry made by you, you would say that is the one you made?

Objected to as irrelevant and leading, and we object to any further testimony from this witness, until he is connected with the entry here in contest, on the ground that same is irrelevant.

Q. At the time that you made this homestead entry, where were you living?

A. At Lloyd, Rapides Parish.

Q. How far from the place where your homestead was located?

A. About thirty-five miles.

The former objection shall be considered as applying to the entire line of evidence, without repetition.

Q. Were you married at the time?

A. Yes, sir.

Q. Have any children?

A. Yes, sir.

Q. How many?

A. Two.

Q. Where was your wife and children living?

A. Living with me at Lloyd.

Q. Thirty-five miles from your homestead?

A. About that.

204 Q. After making your homestead entry in 1899, did you change your place of residence?

A. No, sir.

Q. You continued to live at Lloyd?

A. Yes, sir. My family lived there.

Q. You lived with them?

A. Yes, sir.

Q. How often did you visit your homestead?



A. Three or four times a year. That has been a good while ago and I have had no connection with it since then.

Q. On these visits to your homestead, how long would you stay?

A. Sometimes I would stay a day and sometimes I would stay two days.

Q. Did you put any improvements on the land?

A. Yes, sir.

Q. What?

A. House and field.

Q. What kind of a house did you put on there?

A. I put a little log house.

Q. How many rooms?

A. One room.

Q. Was it four walls and a roof?

A. Yes, sir.

Q. Did it have any windows?

A. No, sir.

Q. Any door?

A. Yes, sir; one door.

Q. Did it have a door, or just an opening for a door?

A. Both.

Q. Have a chimney?

A. Yes, sir.

Q. What kind of a chimney?

A. Dirt chimney.

Q. Was this house, any time during the life of  
205 the homestead, furnished?

A. Yes, sir. I had my plow tools there, saw and hammer.

Q. The only furniture you had there was that?

A. I had some cooking utensils to cook with.

Q. Did you have any household goods there?

A. Nothing but a cot.

Objected to as leading.

Q. Now, what did you finally do with the homestead, if anything?

Objected to by counsel for defendant on the ground that parole is inadmissible to prove a conveyance of land.

A. I commuted it.

Q. How long after you homesteaded did you commute?

A. Two years.

Q. Before whom did you commute?

A. Boyd.

Q. James M. Boyd?

A. Yes, sir.

Q. What did you do with this land, after you commuted it?

A. Sold it.

Q. How long afterwards?

A. Well, thirty or forty days, I suppose. I do not remember exactly.

Q. To whom did you sell?

Objected to by counsel for defendant on the ground that parole evidence is inadmissible to prove title to real estate.

Counsel for the government states that the evidence is not offered for the purpose of proving the sale, but to prove the parties to whom the sale was made, and their connection with the transaction and what was said and done in regard to the arrangements for and consummation of the sale.

Q. To whom did you sell this land?

A. An agent who claimed to be the agent of the Wright-Blodgett Timber Company.

Q. Examine this certified copy of the deed.

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Counsel for the government hands the witness a certified copy of deed, purporting to be a deed from Samuel S. Aikin, Jr., to the Wright-Bodgett Company, Limited, to the south half of the northwest quarter, and south half of the northeast quarter of Section Two, Township Two, Range Five, dated 28th of September, 1901.

Q. To the best of your recollection, is that about the date and the condition contained in there of the sale, as this deed recites?

A. Yes, sir.

Objected to by counsel for defendants as leading.

Q. This deed recites a consideration of seven hundred and seventy dollars, that is correct?

Objected to by counsel for defendants as leading.

A. Yes, sir; that is the sale. I sold for three dollars and seventy-five cents an acre, I think, though I am not positive.

Q. That is about the consideration?

A. Yes, sir.

Counsel for the government offers in evidence certified copy of the deed referred to.

"A" Filed in evidence and marked Exhibit "A."

Q. Now, who conducted the negotiations for this sale, on behalf of the Wright-Blodgett Company?

Objected to by counsel for defendants on the ground that the written instrument is the best evidence.

Q. Who conducted the negotiations for the sale of this property?

A. The Wright-Blodgett people. Their agent Mr. Wasey.

Q. What was his name?

A. Nat Wasey.

Q. How long had you known Nat Wasey prior to this sale?

A. I never knew him personally until then, although I had heard of him before.

Q. Had you seen him before?

207 A. Yes, sir; a few days.

Q. Did you know where he lived?

A. No, sir. I knew about where he lived, about where he lived.

Q. About where did he live?

Objected to by counsel for defendants on the ground that it calls for the opinion of the witness.

A. Well, he lived in that parish.

Q. Do you know how far he lived from your homestead?

A. Well, I could not swear positively, but it must have been fifteen—ten or fifteen miles. I could not say positively.

Objected to as this is the opinion of the witness.

Q. Did you go to Nat Wasey in regard to this sale of this land, or did Wasey come to you?

A. Wasey come to me, or we met at the postoffice where the sale was made.

Q. How far was the postoffice from where your homestead was located, where you and Wasey met?

A. Three or four miles, I suppose.

Q. Did Mr. Wasey, or anyone, representing the Wright-Blodgett Company, go with you to look at this land?

A. Yes, sir. We went over it together.

Q. When you say we, who do you mean?

A. Wasey and myself.

Q. Did Wasey ask you anything in regard to where you lived, as to whether you lived on the land, or what improvements you had made, or what compliance you had made with the homestead laws?

A. No, sir.

Q. Did he ask anything about that?

A. No, sir.

Q. Did Mr. Wasey ask you whether you—did he ask you where you were living?

A. Yes, sir. He knew where I lived.

Q. He knew where you lived?

208 A. Yes, sir.

Q. Did he know how long you had been living over there at your present home?

A. No, sir.

Q. Did he know how far that was from the homestead?

A. I could not say whether he knew or not. He knew my postoffice.

Q. How do you know he knew your postoffice?

A. Well, by sending me the deed.

Q. How were you paid for this land?

A. I was paid by the Wright-Blodgett Company, I suppose.

(Objected to by counsel for defendants as it is the opinion of the witness.)

Q. Who paid you?

A. It was sent to me.

Q. It was sent to you?

A. Yes, sir. The money.

Q. In what shape?

A. I could not say whether it was a check or money. I do not remember.

Q. Who sent it to you?

A. Well, it was the Wright-Blodgett Company.

Q. As I understand you then, you and Wasey met at the postoffice near the homestead and discussed the sale of the land, and you and Wasey went over the whole homestead.

A. Yes, sir.

Q. You agreed upon the sale?

A. Yes, sir.

(Objected to by counsel for defendants as leading.)

Q. The deed was made out and sent to you and the money was sent you by the Wright-Blodgett Company?

(Objected to by counsel for defendants as leading.)

A. Yes, sir.

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On cross-examination he said:

Q. Mr. Akin, you do not remember, with any degree of certainty, what year you made the homestead entry. It might have been in 1900 or 1898, might it not?

A. I could not positively say. As well as my recollection serves me it was in 1899.

Q. You could not say for certain that it was not 1898 or 1900?

A. No, sir.

Q. To the best of your recollection, the entry that you made at this time, any specific time, was on Section Five?

A. As well as I remember.

Q. And on the place on which you did make the entry you erected a log house?

A. Yes, sir.

Q. You furnished that house with a cot to sleep on and cooking utensils, plow tools, and what else did you have in there, a place to wash up?

A. Yes, sir. Had a basin.

Q. Have any chair?

A. Had a bench.

Q. The house had a brick chimney?

A. No, sir, a dirt chimney.

Q. The whole house had the appearance of being inhabited?

A. I suppose so.

Q. You kept it in good order?

A. As well as a man can.

Q. You got your place cleared up?

A. Yes, sir.

Q. You planted a crop and raised a crop?

A. Yes, sir.

Q. The only time that you knew Nat Wasey was a few days before you met him at the postoffice?

A. Yes, sir, personally.

Q. You had heard of him before that?

210 A. Yes, sir.

Q. You took him over there and showed him the improvements?

A. Yes, sir, we went together. I and Wasey.

Q. You have never been to Nat Wasey's house yourself?

A. No, sir. Never was at his house.

Q. You do not know of your own personal knowledge where he lives?

A. No, sir. Never was at his house.

(Counsel for defendants asks that the testimony of this witness in regard to the domicile of Nat Wasey be stricken out as hearsay.)

Q. You said Nat Wasey knew where you were living. Do you mean that he knew where you were living at the time that you met him at the postoffice?

A. Yes, sir, he knew my postoffice.

Q. He did not know any more about you before that than you knew about him?

A. No, sir; not that I know of.

Q. Before you knew him personally, you did not know whether he knew where you lived or not?

A. No, sir.

Q. And you know him personally just a few days before this transaction?

A. Yes, sir.

Q. You said that the Wright-Blodgett Company sent you the money for this land. Do you recall who the letter came from that the money was in?

A. No, sir. I cannot.

Q. You could not swear that it was from the Wright-Blodgett Company, or someone else?

A. The sale was made to them.

Q. You do not now recall whether they sent you the money or not?

A. No, sir. I could not say. I got the money.

Q. You were not bothering about who sent it?

A. No, sir.

Q. The money come in a letter?

211 A. Yes, sir, in a letter.

(Objected to by counsel for defendants on the ground that the letter is the best evidence.)

A. I do not remember whether it was a check or cash.

Q. You do not remember whether it was a check or cash?

A. No, sir.

Q. You don't know whose check it was, if paid by a check?

A. No, sir. Could not swear as to that.

Q. You thought, at the time that you made your final proof, Mr. Akin, that you were complying fully with the law?

A. Yes, sir.

Q. You were in absolute good faith, as far as you knew in proving up your homestead?

A. Yes, sir.

Q. You had no reason to believe that you had not done everything that the law required?

A. That was my honest opinion.

Q. You told Nat Wasey that you had done everything that the law required?

A. That is the way the trade was made.

Q. On the ground that you had done everything that the law required?

A. Yes, sir.

Q. He was assured of that fact?

A. Yes, sir.

Q. You believed and everyone believed that you had done everything that the law required?

A. Yes, sir, citizens and neighbors were witnesses to it. Witnesses to a great many others prior to that time and I did not see any reason to object to those men being witnesses to mine.

212 On redirect examination he said:

Q. In answer to Mr. Monroe's question you answered that Mr. Wasey did ask what you had done in regard to the homestead entry. Mr. Monroe asked if you told Mr. Wasey you had complied with the homestead laws?

A. Yes, sir.

Q. Then Mr. Wasey did inquire what you had done in regard to complying with the homestead laws?

A. Yes, sir.

Q. Did you tell him where you lived during this homestead?

A. Yes, sir. At my present home.

Q. At your present home?

A. Yes, sir.

Q. That was thirty-five miles from the homestead?

A. Yes, sir.

Q. Then, when he bought this land, from his own inquiries he learned that you were living with your wife and children thirty-five miles from the homestead?

(Objected to by counsel for defendant on the ground that it calls for the knowledge of Wasey, from this witness.)

Q. You told Wasey that when you made the sale?

A. Yes, sir.

Q. Mr. Monroe asked if you made a crop on this land?

A. Yes, sir.

Q. How much of that land did you have in cultivation?

A. Well, I did not measure it; about an acre or an acre and a half. I did not measure it and could not positive swear how much there was.

Q. What did you plant there?

A. Corn.

Q. When did you first plant the corn?



A. I cannot recall the date.

Q. The year that you entered it?

A. Yes, sir.

Q. How much did you plant in corn?

213 A. All of it.

Q. How often did you cultivate that corn?

A. Well, I planted it and went back and cultivated it. I could not tell exactly how many times.

Q. How much corn did you make on that homestead?

A. I did not make a thousand bushels.

Q. How much did you make?

A. I suppose three or four barrels.

Q. What did you do with it?

A. I used it.

Q. Where?

A. There, fed my horse there.

Q. What horse? Did you keep a horse there all the time?

A. No, sir. Had one when I came out there.

Q. And you went out there three or four times a year?

A. Yes, sir.

Q. And would stay a day or so?

A. Yes, sir.

Q. Simply made enough corn off of the place to feed the horse on three or four trips out there?

A. Yes, sir.

Q. Did you ever sell any of that crop to any one else?

A. No, sir.

Q. Did you ever take any away to the other place or make any disposition of it?

A. No, sir.

Q. Have you the letter that was sent to you enclosing that money in payment for this land?

A. No, sir.

Q. You have no knowledge of its whereabouts?

A. No, sir.

Q. You stated that it was your recollection that it come from the Wright-Blodgett Company?

214 (Objected to by counsel for defendants as leading.)

A. Yes, sir.

Q. They were the people to whom you sold the land?

A. Yes, sir, to their representative.

On recross-examination he said:

Q. About this horse and corn, did you leave any corn there when you left?

A. No, sir. I used it.

Q. How much corn did you make altogether on that acre and a half?

A. Three or four barrels, I suppose. I did not measure it.

Q. Do you remember distinctly having any conversation with Mr. Wasey about where you lived, or that is just your impression that you told him?

A. I had a conversation. We talked it over the day that we went over the land.

Q. Do you remember distinctly his asking where you lived?

A. Yes, sir.

Q. In your original examination by Mr. Monroe, you stated, when he asked you if you had a conversation with him, that you had not had any conversation in regard to that?

A. I did. I did not remember that. I misunderstood his question then.

Q. Is it not a fact that your conversation with Mr. Wasey was confined to what you had done?

A. We talked over the matter and he asked me my post-office. Whether he knew personally where I lived or not, I could not swear.

Q. He asked where you lived at that time?

A. Yes, sir.

Q. You told him where you lived then?

A. Yes, sir.

Q. His idea in asking that was to find out your postoffice to send you the deed?

A. Yes, sir.

Q. That is the only conversation that you had with him about your residence?

A. Yes, sir.

Q. You told him that you were living at Lloyd?

215 A. Yes, sir.

Q. That is all you told him about your residence?

A. Yes, sir.

Q. There was no conversation as to where you lived a year or two before that?

A. No, sir. Not before that.

On redirect examination he said:

Q. Then when you told me a few minutes ago, that in going over this land, that you and Wasey talked over the matter, and you told him where you lived throughout the life of this homestead, you were mistaken?

A. I must have misunderstood the question. He asked me my postoffice.

Q. When you and Wasey were going over the land, talking over the homestead, talking over the purchase of it, he asked you where you lived during the life of the homestead?

A. No, sir. He asked me where was my postoffice.

Q. Did he ask you how long you had been living there?

A. No, sir.

Q. Did he ask you whether or not you had lived on the homestead at all?

A. No, sir. Not with my family.

Q. Did he ask whether you lived on it at all, without your family?

A. He asked if I had ever done anything there, and I told him I put a house and had a field there and showed it to him.

Q. What did you tell him?

A. I told him that I had built a house and had a field there.

Q. Did you tell him how long you had lived there?

A. No, sir. He did not ask me.

Q. Then all you told him was that you built the house?

A. Yes, sir. Built the house. It has been so long it is pretty hard to remember those things.

Q. But you tell me one thing and tell Mr. Monroe another. I want to know the facts. Did you make any statement to Mr. Wasey as to whether or not you had lived on that land at all, to the best of your knowledge?

A. I told him that I had been there and worked there myself, as well as I remember.

Q. Did you tell him whether you had lived there with your family. Made that your home?

216

A. I do not remember that question.

Q. You do not remember whether you told him that or not?

A. No, sir. I did not tell him that I lived there with my family.

Q. Did he ask you that if you had lived there with your family or not?

A. I could not swear that he did.

Q. You are also called Sylvester Akin?

A. Yes, sir.

Q. You state that you are not positive about the numbers of the land?

A. No, sir. I am not positive.

Q. This land that you took Nat Wasey to see, the land looked over, that was your homestead?

A. Yes, sir.

Q. That is the land that you sold the Wright-Blodgett Company?

(Objected to as leading.)

A. Yes, sir.

Counsel for the government offered in evidence certified copies of the records of the general Land Office, of the papers in the homestead entry of S. S. Akin, Jr., on the south half of northwest quarter and south half of northeast quarter of Section Two, Township Two, north of range five west, Louisiana meridian.

Counsel for the Wright-Blodgett Company offers in evidence the patent to S. S. Akin, Jr., the opinion of Pujo & Moss as to the validity of the title and the abstract on which the same is inscribed, both of them now in the record in the case of United States Government vs. ———, and the Wright-Blodgett Company, and the testimony of C. D. Moss.

I hereby certify that the above and foregoing is a true and correct translation of my stenographic notes taken in the above numbered and entitled cause.

R. B. COOK, Stenographer.

217 DEMAND THAT OTHER DEFENDANT JOIN  
APPELLANTS IN APPEAL.

Filed June 10, 1912.

LEROY B. GULOTTA,  
Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

May 25th, 1912.

Mr. Samuel S. Akin, Jr.

Dear Sir:

The undersigned counsel for the Wright-Blodgett Company, Ltd., hereby demand that you shall join them in a petition of appeal, which they propose making to the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, in the case of United States vs. Samuel S. Akin, Jr., and the Wright-Blodgett Co., Ltd., No. 365 of the docket of said Court, seeking an appeal to the United States Circuit Court of Appeal from a decree entered by said Circuit Court in said cause on the 6th day of May, 1912.

This petition will be presented in said Court at Shreveport, Louisiana, on the 10 day of June, 1912, at eleven o'clock, and if you fail to assent to this request at that time, such failure to assent to this request will be considered as a refusal to join in said bill.

HALL, MONROE & LEMANN,  
MITCHELL & YOUNG,  
Attorneys Wright-Blodgett Company, Ltd.

Exhibit "A."

June 8th, 1912.

I, the undersigned, do hereby certify that I am personally acquainted with Samuel S. Akin, Jr., and that I served the original letter of which the above is a copy on the said Samuel S. Akin, Jr., by handing it to him personally, and received from him personally the attached reply, which he signed in my presence.

J. B. BANGEAU,  
Dy. Shff.

218 REFUSAL OF DEFENDANT TO JOIN IN  
APPEAL.

Filed June 10, 1912.

LEROY B. GULOTTA,  
Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

June 8th, 1912.

Messrs. Hall, Monroe & Lemann, and  
Mitchell & Young,

Attorneys Wright-Blodgett Co., Ltd., City.

Gentlemen:

I acknowledge receipt of your letter of May 25th, demanding that I join with the Wright-Blodgett Company, Ltd., in a petition of appeal, which they propose to make to the United States Circuit Court for the Fifth Circuit, and Western District of Louisiana, in the case of the United States of America, Complainants, vs. . . . . ., Samuel S. Aiken, Jr., and the Wright-Blodgett Company, Ltd., defendants, No. 365 of the docket of said Court.

I do now decline in said appeal.

Yours truly,

SAMUEL S. AIKEN.

Exhibit "B."

219 IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT  
OF LOUISIANA, FIFTH CIRCUIT OF THE  
UNITED STATES.

United States of America

vs.

No. 363. In equity

Samuel S. Akin, Jr., and Wright-Blodgett Company, Ltd.

To the Honorable the Judges of the said Court:

The petition of the Wright-Blodgett Company, Ltd., defendant in the above entitled and numbered cause, with respect represents:

That they conceive themselves aggrieved by the decree entered in this cause on the sixth day of May, 1912, and that they desire to and hereby appeal the said decree to the U. S. Circuit Court of Appeal for the Fifth Circuit, and present

herewith and make part of this petition, as Exhibit "A" hereto, assignments of error in said decree.

That as appears by the demand and notice annexed to and made part of this petition, as "Exhibit B" hereto, Samuel S. Akin, Jr., one of the defendants to the said bill, has declined to join your petitioner in said appeal, as appears by his letter hereto annexed, marked "Exhibit C."

That by reason of the premises, your petitioners are entitled to a severance of this appeal from the said Samuel S. Akin, Jr.

Wherefore, the premises considered, petitioners pray that their appeal may be allowed to operate as a supersedeas, upon the giving of bond with surety, in an amount to be fixed by the Court and conditioned according to law, and that a transcript of the whole record, proceedings, testimony and papers upon which said decrees were made, duly authenticated, be sent to the United States Circuit Court of Appeal, for the Fifth Circuit, in the manner and form and at the time prescribed by law and by the practice of this Court.

That citation issue to the United States of America and the said Samuel S. Akin, Jr., and all other necessary parties, in the manner and form prescribed by law, and that your petitioners have such further relief as may be necessary in the premises.

HALL, MONROE & LEMANN,

Attorneys for Petitioner.

#### Order.

Upon the filing and reading of the foregoing petition, it is ordered that the appeal and supersedeas and citation and service, above prayed for, severance and relief, be allowed, upon petitioner's giving bond according to law, with good and sufficient surety, in the sum of two thousand dollars: Let the Clerk of this Court take and approve said bond.

This appeal to be returnable into said Court according to law.

ALECK BOARMAN, Judge.

In open Court at Shreveport, La., on June 10th, 1912.

Indorsed: No. 365. In equity. U. S. Dist. Court, West. Dist. of La. United States vs. S. S. Akin, Jr., and Wright-Blodgett Co., Ltd. Petition and order granting appeal. Filed June 10, 1912. Leroy B. Gulotta, Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

221      ASSIGNMENT OF ERROR ON BEHALF OF  
              THE WRIGHT-BLODGETT COMPANY,  
              LTD., APPELLANTS.

In the District Court of the United States for the Western  
 District of Louisiana, Fifth Circuit of the United States.

United States of America

vs.

No. 365. In equity

Samuel S. Akin, Jr., and The Wright-Blodgett Co., Ltd.

Now comes the Wright-Blodgett Company, Ltd., and assigns the following errors committed by the Court to its prejudice in the decrees and orders herein appealed from, and prays that said decrees and orders may be reversed and set aside.

1. The Court erred in declaring the patent issued to Samuel S. Aiken, Jr., on April 1st, 1902, to the  
 222      land described in the petition null and void, and ordering this appellant to surrender, deliver and return same, and restraining and enjoining the appellant from ever claiming or asserting any right, benefit, privilege or advantage whatsoever under the said patent.

2. The Court erred in finding that in purchasing land for value from the holder of a final receipt or certificate, this appellant was bound to hunt for grounds of doubt and make a searching inquiry as to the validity of his vendor's claims to the property.

3. The Court erred in failing to find that it was incumbent upon the plaintiff to prove:

1. That there was fraud in the original entryman.
2. That the Wright-Blodgett Co., Ltd., had actual notice thereof at the time that it purchased the property.

4. The Court erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:



"So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipts, the deeds of the entrymen to C and the deeds of C to Cl, it was as open to the officers of the government as to Cl, if indeed he knew anything about these dates, yet they seem to have suspected nothing, and he was advised by reputable counsel that the titles were good and bought only on his advice."

5. The Court erred in failing to find that the Wright-Blodgett Company, Ltd., was a purchaser in good faith, for value, and without actual or other notice of the fraud, if any, in the original entrymen.

6. The Court erred in failing to find that the Wright-Blodgett Co., Ltd., being a purchaser for value in good faith, without actual notice, was entitled to hold the land under its patent regardless of the fraud, *vel non*, in the original entrymen.

7. The Court erred in finding that complainant has proven  
223 in this record that there was any fraud or violation  
of the law in the original entrymen.

8. The Court erred in failing to find that the entryman left on the land a well-built house, with a chimney, cooking utensils and bedding, a plow, tools and furniture, and that he, himself, swore, without contradiction, that he never knew the Wright-Blodgett Company, Ltd., agent, until the time of the sale, at which time he told him that he had been on the land, and worked it himself, and in failing to find that there was nothing in this situation to arouse suspicion that the entryman and his witnesses had perjured themselves, when they swore that they had complied with the law.

9. The Court erred in failing to dismiss the bill.

Wherefore, appellant prays that these assignments of error may be maintained and that the decrees complained of may be reversed, annulled and set aside or amended with costs.

HALL, MONROE & LEMANN.

Indorsed: No. 365. In equity. U. S. Dist. Court., West. Dist. of La. U. S. vs. S. S. Akin, Jr., and Wright-Blodgett

Co., Ltd. Assignment of errors. Filed June 10, 1912- Leroy B. Gulotta, Clerk, U. S. Dist. Court, West. Dist. of La.

Citation and service of same and further notice of said appeal waived.

E. H. RANDOLPH,  
U. S. Attorney.

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224 UNITED STATES DISTRICT COURT, WEST-  
ERN DISTRICT OF LOUISIANA.

The United States of America  
versus No. 365. In equity  
Samuel S. Aikin Jr., and The Wright-Blodgett Co., Ltd.

Know All Men By These Presents: That we, The Wright-Blodgett Co., Ltd., of Saginaw, Michigan, as principals, and the United States Fidelity and Guarantee Company of Baltimore, Maryland, as surety, are held and firmly bounded unto the United States of America in the full and just sum of two thousand (\$2,000.00) dollars, to be paid to the United States of America, or to any person or persons authorized to receive same, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents:

Sealed with our seals and dated this the 10th day of June, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately, at a session of the District Court of the United States for the Western District of Louisiana, in a suit pending in said Court between said United States of America and Samuel S. Aikin, Jr., and the Wright-Blodgett Company, Limited, a decree was entered against the said defendants, Samuel S. Aikin, Jr., and the Wright-Blodgett Company, Limited; the said Wright-Blodgett Company, Limited, having obtained from the said Court an order allowing an appeal and supersedeas to the United States Circuit Court of Appeals, to reverse the decree of the aforesaid suit, and a citation directed to the said United States of America to be issued, citing and admonishing the said United States of America to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana.

Now, the conditions of the above obligation is such, that if the said Wright-Blodgett Company, Limited, shall prosecute therein said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void, otherwise to remain in full force and virtue.

[Seal]

THE WRIGHT-BLODGETT CO., LTD.  
By WATTS K. LEVERICH.

THE UNITED STATES FIDELITY &  
GUARANTY CO. OF MARYLAND,  
By WM. M. FORD,

Atty-in-Fact.

Approved June 10th, 1912.

LEROY B. GULOTTA,  
Clerk U. S. District Court, West-  
ern District of Louisiana.

Indorsed: No. 365. United States District Court, Western District of Louisiana. The United States of America, vs. Samuel S. Aikin, Jr., & The Wright-Blodgett Co., Ltd. Appeal bond. \$2,000.00. The United States Fidelity & Guaranty Co. of Maryland, surety. Filed June 10, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

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## CLERK'S CERTIFICATE.

United States of America.

United States District Court for the Western District of  
Louisiana.

Clerk's Office:

I, LEROY B. GULOTTA, Clerk of the United States  
District Court, for the Western District of Louisiana,

Do hereby certify, that the foregoing 225 pages contain and  
form a full, complete, true and perfect Transcript of the  
record and proceedings had and evidence adduced in the cause  
entitled United States of America versus Samuel S. Aiken, Jr.,  
and The Wright-Blodgett Company, Limited, No. 365, in  
equity, of the docket of the United States District Court, for-  
merly United States Circuit Court for the Western District of  
Louisiana, said transcript being made in accordance with the  
præcipe filed by Messrs. Hall, Monroe & Lemann, solicitors for  
appellant.

Witness my hand and seal of office at the City of Shreve-  
port, Louisiana, this 6th day of July, A. D. 1912.

[Seal]

LEROY B. GULOTTA, Clerk,  
United States District Court for  
Western District of Louisiana.



That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz.:

# ARGUMENT AND SUBMISSION.

Extract From the Minutes of January 23d, 1913.

Wright-Blodgett Company, Limited,

versus

No. 2408.

The United States of America.

On this day this cause was called, and, after argument by J. Blanc Monroe, Esq., for appellant, and E. H. Randolph, Esq., United States Attorney, for appellee, was submitted to the Court.

## OPINION OF THE COURT.

Filed February 18th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett & Co., Ltd.,  
 vs.  
 The United States.  
 (Boyd's Case.)

No. 2467.

Wright-Blodgett & Co., Ltd.,  
 vs.  
 The United States.  
 (Aiken's Case.)

No. 2408.

Wright-Blodgett & Co., Ltd.,  
 vs.  
 The United States.  
 (Bryers' Case.)

No. 2409.

Wright-Blodgett & Co., Ltd.,  
 vs.  
 The United States.  
 (Hicks' Case.)

No. 2410.

Wright-Blodgett & Co., Ltd.,  
 vs.  
 The United States.  
 (Allen's Case.)

No. 2411.

Appeals From the United States District Court for the Western District of Louisiana.

Before PARDEE, Circuit Judge, and NEWMAN and GRUBB, District Judges.

By the COURT.

The above entitled and numbered cases are separate appeals from separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that

Wright-Blodgett & Company, vendees of the alleged homesteaders, are charged through their active agents on the ground with knowledge of the fraud.

The decree in each of the above mentioned cases is affirmed.

### JUDGMENT.

Extract From the Minutes of February 18, 1913.

Wright-Blodgett Company, Limited,

vs.

No. 2403.

The United States of America.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed.

### PETITION FOR REHEARING.

Filed March 8th, 1913.





# United States Circuit Court of Appeals

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No. 2408.

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**WRIGHT-BLODGETT COMPANY, LIMITED,**  
**(Aiken, Jr., Case)**

**Appellant,**

**versus**

**UNITED STATES OF AMERICA,**  
**Appellee.**

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To the Honorable the Judges of the United States Circuit  
Court of Appeals, Fifth Circuit:

The petition of the **Wright-Blodgett Company, Limited**,  
appellee herein, with respect shows:

That a rehearing should be granted in this case, for  
this, to-wit:

## I.

Under the law (200 U. S. 601), the burden was on complainant to show actual notice of the fraud in the Wright-Blodgett Company, Limited.

The record shows that the Wright-Blodgett Company, Limited, bought this land on a general timber estimate, and after attorneys of the highest standing had examined the titles and reported them good.

The record also shows that all the external and visible signs, such as the existence of a house, with furniture in it, a clearing with a growing crop, etc., indicated that the entryman had fully complied with the law. (Trans., p. 186.) In fact so clearly did they indicate this that the government inspectors, argus-eyed to spy out inaccuracies, and keen-scented to smell fraud, were deceived and recommended that a patent issue.

If they were ignorant of the alleged fraud why was not the Wright-Blodgett Company, Limited? They had every reason to be deceived which the Government agents had and in addition they had the assurances arising from the fact that the Government agents had "O K'd" the title, by issuing a final receipt.

Moreover the record shows that the Wright-Blodgett Company, Limited, was assured by the entryman that he had complied with the law.

The testimony of the entryman reads, page 190:

Q. You told Nat Wasey that you had done everything that the law required?

A. That is the way the trade was made.

Q. On the ground that you had done everything that the law required?

A. Yes, sir.

Q. He was assured of that fact?

A. Yes, sir.

Apply to these facts the law as laid down by the Supreme Court of the United States in the **Maxwell Land Grant case, 121 U. S. 325**, where the Court said:

“ ‘We take the general doctrine to be that when in a Court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, **THE TESTIMONY ON WHICH THIS IS DONE MUST BE CLEAR, UNEQUIVOCAL AND CONVINCING, AND THAT IT CANNOT BE DONE UPON A BARE PREPONDERANCE OF EVIDENCE WHICH LEAVES THE ISSUE IN DOUBT.** If the proposition, as thus laid down in the cases cited is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof.’

“The doctrine of that decision has been reaffirmed in numerous subsequent cases. **United States v. Stinson, 197 U. S. 200, 25 Sup. Ct. 426, 49 L. Ed., 724**, and cases there cited.”

And it seems impossible to avoid granting a rehearing and reversing this case.

## II.

The Court should apply to this case the doctrine enunciated in the **Clark case, 200 U. S. 601**, where the Court said:

“So far as any inference was to be drawn from the nearness of the respective dates of the receiver’s receipts, the deeds of the entrymen to C, and the deeds of C to Ce it was as open to the officers as to Ce, if indeed he knew anything about these dates, yet they seem to have suspected nothing, and he was advised by reputable counsel that the titles were good and bought only on his advice.”

This language is especially applicable here because the Government inspectors made an examination and issued a final receipt before the Wright-Blodgett Company, Limited, bought and made another inspection and issued a patent after the Wright-Blodgett Company, Limited, bought, surely if they who were charged with a duty to hunt for grounds of doubt, found none, we who had no such duty cannot be charged with actual notice of the fraud.

Wherefore petitioner prays that a rehearing be granted and for general relief.

J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHELL,  
Solicitors.

I certify that in my opinion the foregoing application is well founded.

..... *J. Blanc Monroe*  
Solicitor.

New Orleans, March. 5. 1913.

## ORDER DENYING REHEARING.

Extract From the Minutes of March 18, 1913.

Wright-Blodgett Company, Limited,

vs.

No. 2408.

The United States of America.

Ordered that the petition for rehearing filed in this cause be, and the same is hereby denied.

## PETITION FOR APPEAL, AND ORDER.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett Company, Limited,

(Aiken, Jr., Case)

Appellant.

vs.

No. 2408.

The United States of America,

Appellee

To the Honorable the Judges of the United States Circuit Court of Appeals, Fifth Circuit:

Now comes the Wright-Blodgett Company, Limited, by its undersigned solicitors, and complains that in the record and proceedings, and also in the rendition of the decree of the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, in the above styled and numbered cause, on the 18 day of February, 1913, which decree was made final by rehearing being denied on the 18 day of March, 1913, and which decree affirmed the decree of the United States Circuit (now District) Court, for the Western District of Louisiana, in said cause, manifest error has intervened to the great damage of the petition; that the jurisdiction of the Circuit Court of the United States for the Western District of Louisiana depended upon the fact that the suit was brought by the United States of America and arose under the Public Land Laws of the United States, the

defendant, appellant, relying for its defense upon said laws and the construction heretofore placed upon them by the Supreme Court of the United States; that the amount involved therein and the matter in controversy exceed the sum of one thousand dollars (\$1000.00), besides costs, and that this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final.

Wherefore, petitioner prays for an allowance of the appeal, to the end that the cause may be carried to the Supreme Court of the United States. And petitioner prays for a supersedeas of said judgment, and such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

(Signed) WRIGHT-BLODGETT CO., LTD.,

(Signed) J. BLANC MONROE,

(Signed) MONTE M. LEMANN,

Solicitors.

Service accepted and citation waived.

(Signed) E. H. RANDOLPH,

U. S. Atty.

March 24, 1913.

### ORDER.

Appeal and supersedeas allowed and bond fixed in the sum of \$500, conditioned as the law directs.

This, the 25th day of March, 1913.

(Signed) DON A. PARDEE, Judge.

## ASSIGNMENT OF ERRORS.

Filed March 25th, 1913.

United States Circuit Court of Appeals.

Wright-Blodgett Company, Limited,  
(Aiken, Jr., Case)                      Appellant,  
vs.    No. 2408.  
The United States of America,                      Appellee.

## ASSIGNMENT OF ERRORS.

The Wright-Blodgett Company, Limited, appellant, by its undersigned solicitor, in connection with its petition for appeal herein, presents this, its assignment of errors, and says:

That the decree made and entered on the 15th day of February, 1913, by the Circuit Court of Appeals of the United States, for the Fifth Circuit, in the case styled Wright-Blodgett Company, Ltd., Appellant, vs. The United States of America, Appellee, No. 2408 of the docket of said Court, is erroneous, and against its just rights, in the following particulars, to-wit:

(1) The Circuit Court of Appeals erred in declaring the patent issued by the United States to Samuel Aiken, Jr., on April 1, 1902, to the land described in the bill of complaint, null and void, and in ordering this appellant to surrender, deliver and return same, and in restraining and enjoining this appellant from ever claiming or asserting any right, benefit, privilege, or advantage whatsoever under said patent.

(2) The Circuit Court of Appeals erred in finding that any fraud in the homestead entry has been proven by the complainant.

(3) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Company, Ltd., were charged, through their active agents on the ground, with knowledge of fraud in the homestead entry.



(4) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated by this Court in the Maxwell Land Grant case, where the Court said:

"We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt."

(5) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

"So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipts, the deeds of the entryman to C and the deeds of C to C1, it was as open to the officers of the Government as to C1, if indeed he knew anything about those dates. Yet they seem to have suspected nothing, and he was advised by reputable counsel that the titles were good and bought only on his advice."

(6) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Company, Ltd., were charged with notice, through their active agents, on the ground. The bill designated Nat Wasey and J. M. Boyd as the persons through whom the Wright-Blodgett Co. Ltd., had received notice. The Wright-Blodgett Co., Ltd., consistently objected to the proof of notice in them through parties other than the said Wasey and Boyd, and under the pleadings and objection of no proof of notice through any other agents could or should have been received or recognized by the Court.

(7) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Co., Ltd., was charged with notice of facts known to Nat Wasey or J. M. Boyd, or any one else, until it was proven that such persons were the agents of the Wright-Blodgett Company, Ltd., and that such facts related to matters within the scope of their authority.

(8) The Circuit Court of Appeals erred in failing to find that the entryman and his witnesses swore that they had complied with the law and that the entryman left on the land a well built house, with a chimney, cooking utensils and bedding, a plow, tools and furniture, and in failing to find that the entryman swore without contradiction that he never knew the agent of the Wright-Blodgett Co., Ltd., until the time of the sale, at which time he told said agent that he had been on the land and worked it himself, and in failing to find that there was nothing in this situation to arouse suspicion that the entryman and his witnesses had perjured themselves when they swore that they had complied with the law.

(9) The Circuit Court of Appeals erred in finding that the land officials of the United States were deceived by the entryman and the evidences of compliance with the law left by the entryman upon the land, and in failing to find that the Wright-Blodgett Co., Ltd., which was confronted with the same statements and same evidence, were not similarly deceived.

(10) The Circuit Court of Appeals erred in failing to dismiss the bill.

Wherefore, appellant prays that the decree herein complained of may in these respects be reversed and corrected, and that appellant may have an adjudication and decree in its favor, in accordance with law and equity, as herein specified.

|          |                           |
|----------|---------------------------|
| (Signed) | J. BLANC MONROE,          |
| (Signed) | MONTE M. LEMANN,          |
|          | J. B. M.,                 |
| (Signed) | A. R. MITCHEL,            |
|          | J. B. M.,                 |
|          | Solicitors for Appellant. |

## APPEAL BOND.

United States Circuit Court of Appeals, Fifth Circuit.

|                                   |            |
|-----------------------------------|------------|
| Wright-Blodgett Company, Limited, |            |
| (Aiken, Jr.),                     | Appellant, |
| vs.                               | No. 2408.  |
| The United States of America,     | Appellee.  |

Know All Men By These Presents: That we, the Wright-Blodgett Company, Limited, as principal, and the United States Fidelity & Guaranty Company of Maryland, as sureties acknowledge ourselves to be jointly indebted unto the United States of America, and Samuel S. Aiken, Jr., appellee, in the above cause, in the sum of five hundred 00/100 dollars, conditioned that whereas, on the 18 day of February, 1913, in the Circuit Court of Appeals of the United States, for the Fifth Circuit, in a suit depending in that Court, wherein the United States of America was plaintiff, appellee, and the Wright-Blodgett Company, Limited, was appellant, numbered on the docket of that Court as above, a decree was rendered against the said Wright-Blodgett Company, Ltd., and the said Wright-Blodgett Co., Ltd., having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the Clerk of Court, to reverse the said decree, and a citation directed to the said United States of America and the said Samuel S. Aiken, Jr., citing and admonishing each of them to be and appear at a session of the Supreme Court of the United States, to be holden in the City of Washington, in the District of Columbia, on the 24th day of April, next.

Now, if the said Wright-Blodgett Company, Limited, shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

|          |   |
|----------|---|
| (Signed) | WRIGHT-BLODGETT CO., LTD.,                |
| (Signed) | UNITED STATES FIDELITY &<br>GUARANTY CO., |

|             |                         |
|-------------|-------------------------|
| By (Signed) | WILLIAM H. KLINE SMITH, |
|-------------|-------------------------|

Its Attorney in Fact.

Approved.

|          |                       |
|----------|-----------------------|
| (Signed) | DON A. PARDEE, Judge. |
|----------|-----------------------|

## CLERK'S CERTIFICATE.

United States of America.

United States Circuit Court of Appeals, Fifth Circuit.

I, FRANK H. MORTIMER, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 204 to 216 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2408, wherein Wright-Blodgett Company, Limited, is appellant, and the United States of America is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 203 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 14th day of April, A. D. 1913.

[Seal]

FRANK H. MORTIMER,

Clerk of the United States Circuit Court of Appeals.

## United States Circuit Court of Appeals, Fifth Circuit.

No. 2408.

WRIGHT-BLODGETT COMPANY, LIMITED, Appellant,  
(Aiken, Jr., Case)

vs.

THE UNITED STATES OF AMERICA, Appellee.

## UNITED STATES OF AMERICA:

The President of the United States to Samuel S. Aiken, Jr., Greeting:

You are hereby notified that in a *case* case in equity in the United States Circuit Court of Appeals, in and for the Fifth Circuit, wherein the United States of America is Complainant, and the Wright-Blodgett Company, Limited and yourself are defendant-, an appeal has been allowed the Wright-Blodgett Company, Limited, therein to the Supreme Court of the United States. You are hereby cited and admonished to be and appear in said Court at Washington, D. C., within thirty days after the date of this citation, to show cause if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 25th day of March, 1913.

DON A. PARDEE,  
*Circuit Judge.*

STATE OF LOUISIANA,  
*Parish of Vernon:*

On this, the 5th day of April, A. D. 1913, personally appears before the undersigned authority, D. F. Turner, who being duly sworn, deposes and says:

That he delivered a copy of the within citation to Samuel S. Aiken, Jr., on the 4th day of April, 1913, at Loyd, Louisiana, by handing same to said person in person.

D. F. TURNER.

Sworn to before me this 5th day of April, 1913.

[Seal W. W. Thompson, Notary Public, Vernon Parish, La.]

W. W. THOMPSON,  
*Notary Public, Vernon Parish, Louisiana.*

[Endorsed:] 2408. In the United States Circuit Court of Appeals, Fifth Circuit. Wright-Blodgett Company, Ltd., versus The United States of America. Citation of Appeal Samuel S. Aiken, Jr. and Marshal's Return thereon. U. S. Circuit Court of Appeals. Filed Apr. 8, 1913. Frank H. Mortimer, clerk.

Endorsed on cover: File No. 23,652. U. S. Circuit Court Appeals, 5th Circuit. Term No. 1077. Wright-Blodgett Company Limited, appellant, vs. The United States. Filed April 22nd, 1913. File No. 23,652.

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914

No. 1070. ~~1070~~ 156

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WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

vs.

THE UNITED STATES.

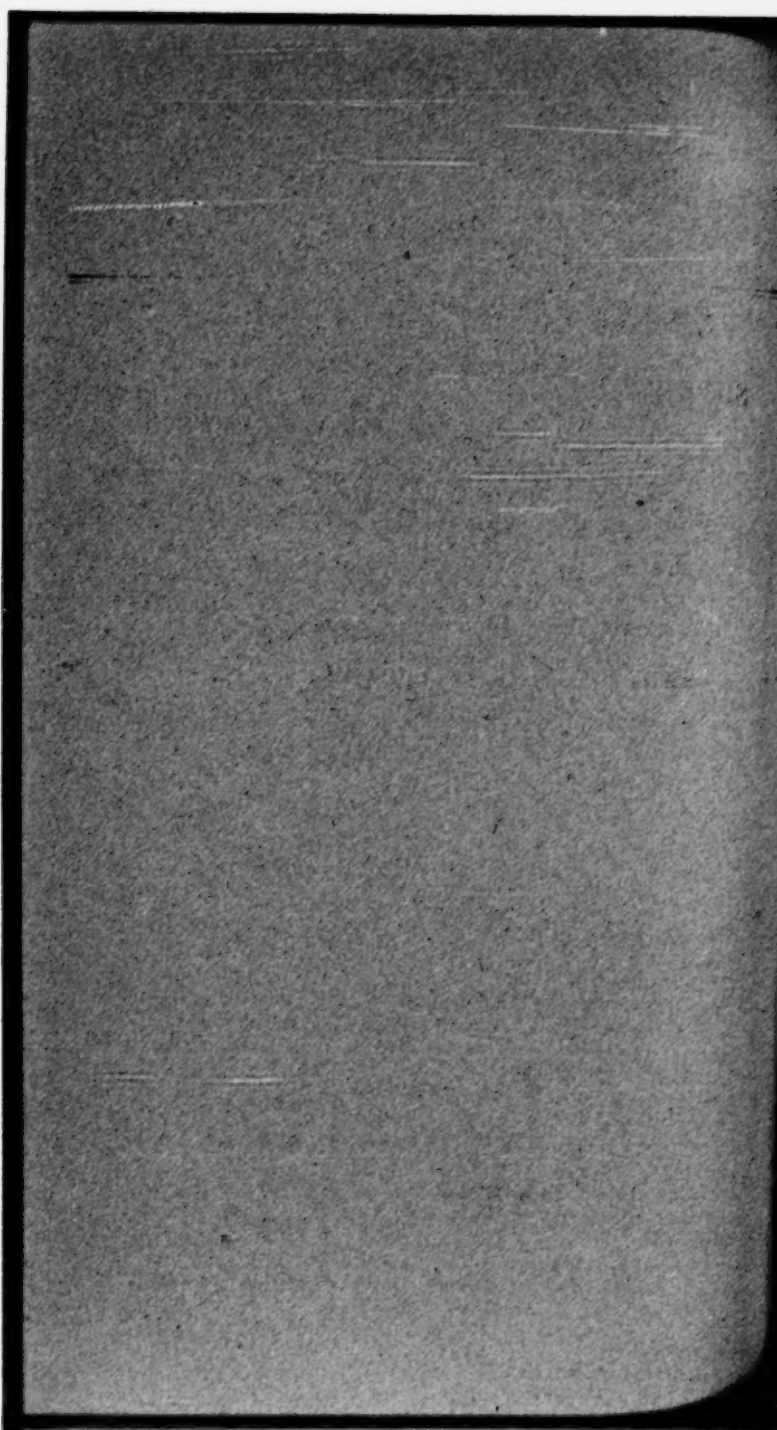
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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

---

FILED APRIL 22, 1915.

(23,653)



(23,653)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1078.

WRIGHT-BLODGETT COMPANY, LIMITED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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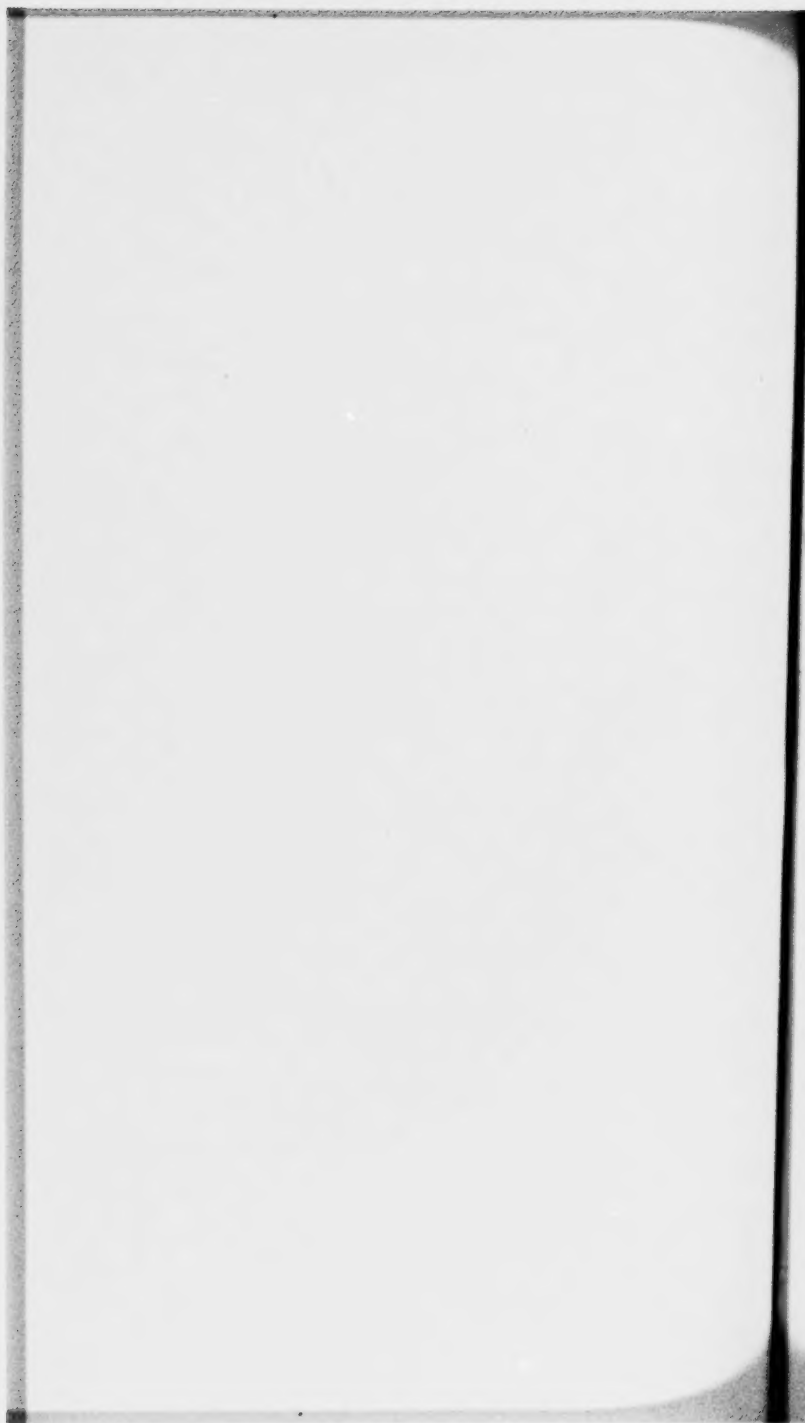


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UNITED STATES OF AMERICA.

United States Circuit Court of Appeals, Fifth Judicial  
Circuit.

PLEAS AND PROCEEDINGS had and done at a Regular  
Term of the United States Circuit Court of Appeals for  
the Fifth Circuit, begun on Thursday, November 21st,  
A. D. 1912, at New Orleans, Louisiana, before the  
Honorable Don A. Pardee, Circuit Judge, and the Hon-  
orable William T. Newman and the Honorable William  
I. Grubb, District Judges:

WRIGHT-BLODGETT COMPANY, LIMITED,

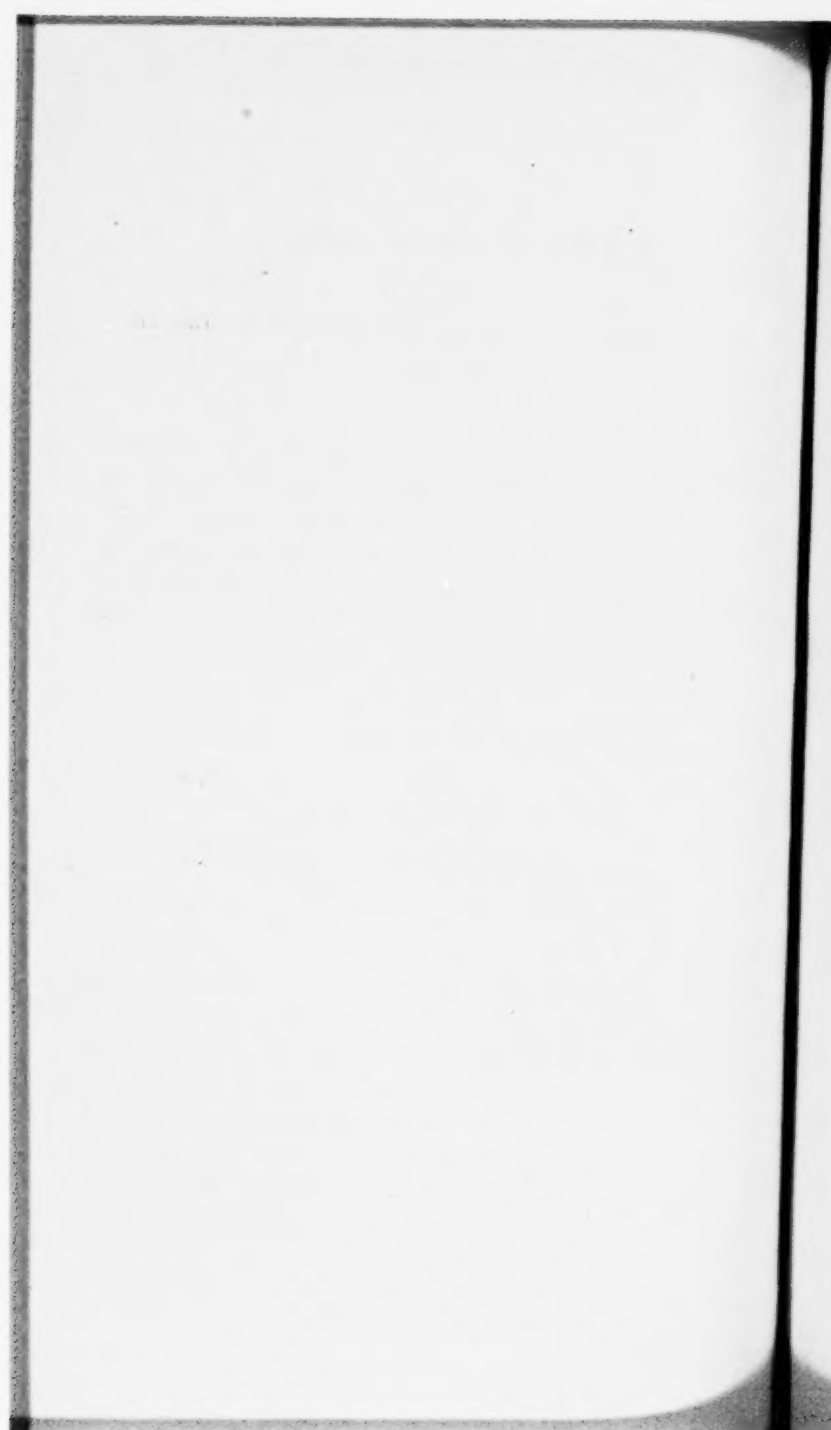
Appellant,

versus

THE UNITED STATES OF AMERICA,

Appellee.

BE IT REMEMBERED, that heretofore, to-wit, on the 3rd  
day of August, A. D. 1912, a Transcript of the Record  
of the above styled cause, pursuant to an Appeal from  
the District Court of the United States for the Western  
District of Louisiana, was filed in the office of the Clerk  
of the said United States Circuit Court of Appeals for  
the Fifth Circuit, which said Transcript was filed and  
docketed in said Circuit Court of Appeals as No. 2409,  
as Follows:



UNITED STATES DISTRICT COURT FOR THE WEST-  
ERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA

versus

No. 380. In equity

SAMUEL E. BRYERS AND THE WRIGHT-BLODGETT  
COMPANY, LIMITED.

APPEALED FROM THE UNITED STATES DISTRICT  
COURT, FOR THE WESTERN DISTRICT OF LOU-  
ISIANA, TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS, FOR THE FIFTH CIRCUIT.

TRANSCRIPT.

Hon. E. H. Randolph, United States Attorney, Hon. Lewell C.  
Butler, Asst. U. S. Attorney, Solicitors for Complainant,  
Appellee.

Messrs. Hall, Monroe & Lemann, Messrs. Mitchell & Young,  
Solicitors for The Wright-Blodgett Company, Limited,  
Defendant, Appellant.

4 In the Circuit Court of the United States for the  
Fifth Circuit and Western District of Louisiana,

THE UNITED STATES OF AMERICA, COMPLAINANT,

versus No. 380. In equity

SAMUEL E. BRYERS AND THE WRIGHT-BLODGETT  
COMPANY, DEFENDANTS.

To the Honorable Judges of the Circuit Court of the United  
States, for the Fifth Circuit and Western District of  
Louisiana, in Equity:

William H. Moody, Attorney General of the United States,  
for and in behalf of the United States of America, files this  
bill of complaint against Samuel E. Bryers, a citizen of and  
residing within the Parish of Vernon, in the State of Louisiana,  
and of the Western District of Louisiana, and the Wright-  
Blodgett Company, a corporation organized under the laws of  
the State of Michigan, and having its domicile and principal  
place of business at Saginaw, in the State of Michigan, de-  
fendants herein, and thereupon your orator complains and  
says:

First. That the defendant, Samuel E. Bryers, on the 31st  
day of January, 1900, under and by virtue of the provisions of  
Sections 2289 and 2290 of the Revised Statutes of the United  
States, filed in the local Land Office of the United States at  
Natchitoches, in the State of Louisiana, his application, No.  
8252, to enter the following described lands, to-wit: The  
north half of the northeast quarter of Section thirty-four, in  
Township No. Three, north of Range No. Five, La. Mer., in  
the Natchitoches Land District, Vernon Parish, Louisiana, con-  
taining seventy-five & 65/100 acres.

Second. That at the time of the filing by the said defendant,  
Samuel E. Bryers, his application to enter the said aforemen-  
tioned lands and premises, and contemporaneously therewith,  
the said defendant likewise filed in the said local Land Office  
of the said United States, as required by law, his affidavit and  
statement in writing under oath, in which, among other things,  
he stated and deposed that his said application to enter said

lands as a homestead was honestly and in good faith made for the purpose of actual settlement and cultivation, and that he would faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to said lands so applied for, and that

5 he had not and did not apply to enter the said lands for the purposes of speculation, but in good faith to acquire a home for himself. That, thereupon, the said defendant then and there paid to the receiver of said Land Office of the United States at Natchitoches, Louisiana, the sum of eight & 98/100 dollars, being the amount of fees and compensation then and there due the register and receiver of said Land Office for the entry of said lands, and upon said payment having been made as aforesaid, a receipt was then and there issued and delivered by the said receiver to said defendant for the amount so paid, and attached to and connected with said receipt, a notation, setting forth in detail the requirements of the law to be observed and complied with by said defendant in order to obtain title to said lands so applied for to be entered by him, as follows, to-wit :

"Note—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the five years, he must file proof of his actual residence and cultivation, failing to do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to time of payment."

Third. That, thereupon, in order to entitle the said defendant, Samuel E. Bryers, to obtain and procure from the said United States a patent for said tract of land under the homestead laws of the United States, it was incumbent on said defendant, and he was required to make actual settlement on said lands and reside thereon and cultivate the same for a period of five years from and after the date of the filing of his said application and affidavit hereinbefore mentioned and



referred to, or in case said defendant did not desire to remain upon said lands the full period of five years, to make payment for said lands at the expiration of fourteen months from and after the filing of his said application and affidavit, upon making proof before the register and receiver of the said local land office at Natchitoches, Louisiana, of settlement upon and cultivation of said land by said defendant from the date of the filing of said application and affidavit down to the time of making such payment. That for the purpose of availing himself of the privilege afforded by the laws in such cases made and provided, to purchase the lands after the expiration of fourteen months, from and after the filing by him of his said application and affidavit, as aforesaid, the said defendant, Samuel E. Bryers on the 17th day of August, A. D. 1901, appeared before James M. Boyd, then and there a United

6 States Commissioner, at Cora in the Parish of Vernon, State of Louisiana, due notice thereof having been given, as required by law, with his witnesses, Leon Smith and E. Z. Boyd, and offered proof before the said James M. Boyd, United States Commissioner, as aforesaid, that he had settled upon the said lands and premises and actually resided thereon and cultivated the same as required by and within the meaning of the said homestead laws of the United States, and then and there gave, made out and signed his deposition, and swore to the same before the said James M. Boyd, United States Commissioner, as aforesaid, and soon thereafter, to-wit, on the 26th day of August, A. D. 1901, filed and caused to be filed the said deposition and sworn statement in the United States local land office at Natchitoches, the said local land office being then and there the proper United States land office of the land district wherein said lands are situated, and then and there offered, presented, delivered and filed the said deposition and sworn statement to and with the register and receiver of the said United States land office, as proof of the settlement and residence upon and the cultivation of the said lands and premises by the said defendant, as required by law, and the same was accepted by the register and receiver of said land office for the purpose for which they were offered.

Fourth. And your orator sheweth unto your Honors that the said defendant, Samuel E. Bryers, in said deposition and

sworn statement, made, signed and sworn to by him as aforesaid, and offered, presented, delivered to and filed with the register and receiver, and accepted by them as proof of the settlement and residence of said defendant upon said lands and of the cultivation of the same by him, among other things, testified and deposed that he established his actual residence upon said lands on the first day of February, A. D. 1900, and had resided on said lands continuously since said date; that he had cleared about two acres of said lands, and that he had cultivated the same for two seasons; that the said defendant procured from each of his said witnesses, Leon Smith and E. Z. Boyd, a like deposition and sworn statement, taken before the said James M. Boyd, United States Commissioner, as aforesaid, on the 17th day of August, 1901, the same in effect as and corroborative and in aid of the said deposition and sworn statement made, signed and sworn to by him, the said defendant, as aforesaid, and filed the same with defendant's own deposition and sworn statement in the local land office of the said United States at Natchitoches, Louisiana,

7 as proof of the settlement and residence upon and the cultivation of said land by said defendant as required by law, and all of said depositions, testimony and sworn statements of the defendant and his said witnesses, so made, signed and sworn to, as aforesaid were and each of them was, then and there, taken and accepted by the said register and receiver of said land office as proof of the settlement and residence of the said defendant upon and the cultivation by him of the said lands and premises. That, thereupon, on the 18th day of September, A. D. 1901, the said defendant paid to the receiver of the said United States land office the sum of one hundred and eighty-nine & 13/100 dollars, being payment for said lands at the rate of two and 50/100 dollars per acre for said lands, and thereupon the said receiver then and there issued to said defendant his final receipt, No. 21279, for the said moneys so paid to him by the said defendant in payment for said lands, and the register of said land office, likewise, then and there issued to said defendant his Certificate No. 21279, certifying that in pursuance of law, the said defendant had purchased said lands, and that upon presentation of said certificate to the commissioner of the general land office, the said defendant, Samuel E. Bryers, should be entitled to receive a patent for the tract of land hereinbefore more

particularly set forth and described. That thereafter such proceedings were had that on the first day of April, A. D. 1902, a patent was issued to said defendant, Samuel E. Bryers, for said lands, which said patent was duly delivered to said defendant and received by him.

Fifth. And your orator further sheweth unto your Honors that the said acceptance of the said deposition and testimony of the said defendant, Samuel E. Bryers, and of his said witnesses, Leon Smith and E. Z. Boyd, as proof of the settlement and residence of the said defendant upon said lands, and the cultivation of the same by him as required by law, by the said register and receiver and the issuance of the said final receipt, and the issuance of the said certificate of purchase as hereinbefore set forth, and the issuance of said patent for the said tract of land by the United States, were done by the said officers of the said land office, and the officers of your orator, the United States, in reliance by them and each of them upon the truth of the testimony and statements contained in the said deposition of the said defendant, Samuel E. Bryers, and in reliance by them and each of them, upon the truth of the testimony and statements, contained in the depositions of the said witnesses, Leon Smith and E. Z. Boyd, and in reliance upon the good faith of the said defendant and his said witnesses, and not otherwise.

S Sixth. Your orator avers that the said deposition of the said defendant, Samuel E. Bryers, and the depositions of his said witnesses, Leon Smith and E. Z. Boyd, were and each of them was then and there false and fraudulent, as was then and there well known to the said defendant and each of his said witnesses, and made with the intent to deceive the officers of the United States, and with the intent to fraudulently obtain a patent to the said lands hereinbefore described, and by fraud and deceit procure a patent for the said lands, by means of false and fraudulent testimony and statements made and contained in said deposition and testimony in this, to-wit: That the said defendant did not establish his actual residence upon said lands or any part or portion thereof on the 1st day of February, A. D. 1900, or at any time or at all, and that the said defendant had not at the time of making his said proof and filing the same in the said land

office, resided on said land or any portion thereof, continuously or in any other manner or at all since the 1st day of February, A. D. 1900, and had not then or at any other time cleared about two acres of said land or any other amount of said lands, and that he had not cultivated about 2 acres of said lands or any other portion thereof, for two seasons. But your orator alleges the fact to be that the defendant never did make settlement upon said lands or any part thereof, and never did establish his residence on said lands or any part thereof for two seasons or at all; and each and every of the statements so made by the said defendant and his said witnesses as hereinafter specifically mentioned and set forth which are contained in said depositions and testimony to prove settlement and residence by said defendant on said lands, and the cultivation of the same by him as required by the homestead laws of the United States are utterly false, fraudulent and untrue in every particular, as he, the said defendant, Samuel E. Bryers, then and there well knew.

Seventh. And your orator charges and alleges that the said testimony of the said defendant, Samuel E. Bryers, and the testimony of his said witnesses, Leon Smith and E. Z. Boyd, contained in said depositions made by them as aforesaid, was false, fraudulent and untrue in the respects and in the several particulars as hereinbefore set forth; and the same was made, offered and file as proof of the settlement and residence of the said defendant upon said lands, and the cultivation of the same, as aforesaid, for the false and fraudulent purpose of imposing upon and deceiving the register and receiver of the said United States land office at Natchitoches, Louisiana, and to cause and induce the said officers and agents of your orator to believe that the statements and testimony contained in the

9        said depositions were true, and that the said defendant, Samuel E. Bryers, had in fact made and established a settlement and resided upon said tract of land, and had cultivated the same as by law required, and for the purpose of obtaining and procuring by means of fraud and deceit the issuance to said defendant a patent for the said lands hereinbefore described.

And your orator further sheweth unto your Honors that the said defendant, Samuel E. Bryers, by means of said false and fraudulent depositions and the false and fraudulent state-

ments and testimony contained therein, given under the sanction of an oath of the said defendant and his said witnesses imposed upon and deceived the said officers and agents of the United States, and caused and induced them to believe that the testimony and statements contained in said depositions were true, and that the said defendant had actually resided upon said lands, and had cultivated the same in the manner and to the extent as stated in said depositions. And the said officers and agents of your orator, the United States, supposing the said testimony and statements contained in the depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements, so fraudulently and falsely given and by the said defendant, and his said witnesses as aforesaid, and believing and supposing upon the strength of said depositions and testimony that the said defendant had actually made settlement and established his residence upon said tract of land, and had cultivated the same in the manner and to the extent, and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and of the United States patent therefor by the said officers of the United States as hereinbefore set forth and delivering the said patent to the defendant.

Eighth. And your orator further sheweth unto your Honors that the existence of said patent so fraudulently obtained and procured by the said defendant, as aforesaid, on its face entitles said defendant to exercise the right of absolute ownership of and over said lands hereinbefore mentioned and described, and to assert a title to the same, to which the said defendant is not entitled. That if the said patent remains uncanceled and in force it can be used in fraud of your orator and all persons relying thereon, as a valid and subsisting conveyance of the legal title to said lands and premises, all of which acts and doings are contrary to equity and good conscience, and done to the manifest injury of your orator.

10 Ninth. And your orator further sheweth unto your Honors that the Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan,

having its domicile and place of business at Saginaw in the State of Michigan, is now asserting title to the said lands so falsely and fraudulently obtained and procured to be patented by the United States to the said defendant, Samuel E. Bryers; that said company is asserting title to said lands by reason of an act of sale from the said defendant, Samuel E. Bryers, to the said Wright-Blodgett Company of date September 28th, 1901, recorded in the clerk's office of the Parish of Vernon, Louisiana, for the purported consideration of the sum of ninety dollars. Your orator avers and charges that at the time of making said sale or pretended sale to the said Wright-Blodgett Company, aforesaid, the said defendant, Samuel E. Bryers, had no title either real or apparent to the lands sought to be conveyed by said act of sale; that said act of sale was made to the said Wright-Blodgett Company more than six months before the issuance to him by the United States of said patent to said lands, and that, therefore, the said lands were not the said lands of the said defendant, Samuel E. Bryers, but were the lands of the United States. And your orator further sheweth unto your Honors that the subsequent issuance of the said patent to the said defendant, Samuel E. Bryers, could not and did not inure to the benefit of the said Wright-Blodgett Company, by reason of the said act of sale or pretended act of sale, for the reason that said patent was so obtained as hereinbefore set forth by the false and fraudulent methods therein described and charged. Your orator further charges and avers that at the time of said pretended sale by the said defendant, Samuel E. Bryers, to the said Wright-Blodgett Company, aforesaid, and prior thereto, and up to and including the dates of making said false and fraudulent proof of the residence upon and cultivation of said lands by the said defendant, Samuel E. Bryers, and his said witnesses and of the issuance of said final receipt and said certificate of purchase, and of the issuance of said patent, one James M. Boyd and one Nat Wasey, and each of them was an agent of the said Wright-Blodgett Company, and entrusted by it in the investigation, solicitation and purchase of lands for its use and benefit, and that the said Wright-Blodgett Company, by and through its said agents, was well advised of and knew each and every detail of the acts and things done and committed, as hereinbefore set forth and described by the said defendant, Samuel E.

Bryers, and his said witnesses for the unlawful and inequitable purpose of obtaining by such false and fraudulent methods the issuance of said patent; and your orator avers and charges that the said Wright-Blodgett Company, so well knowing and being advised of said false and fraudulent acts and doings on the part of the said defendant, Samuel E. Bryers, and his said witnesses, did, through its officers, whose names are to your orator unknown, and therefore not herein given and set forth, aid, assist, advise and encourage the commission of each and every of said acts and things, with the fraudulent purpose of obtaining title to the said lands hereinbefore described. For these reasons your orator avers that the said act of sale, as hereinbefore set forth, from the said defendant, Samuel E. Bryers, to the said Wright-Blodgett Company, should be cancelled, annulled, set aside and held for naught by the decree of your Honors, as contrary to equity and good conscience and to the manifest injury of your orator.

For as much as your orator can have no adequate relief except in this Court and to this end, that the defendants and each of them may, if he can, show why your orator should not have the relief hereby prayed, and make a full disclosure and discovery of the matters aforesaid, and according to the best of his knowledge, remembrance, information and belief, true, direct and perfect answer make each of them to the matters herein stated and charged, but not under oath an answer under oath being hereby expressly waived.

And your orator prays that a decree be rendered by this Court, declaring null and void the said patent to the said defendant, Samuel E. Bryers, for said lands and premises, and requiring, directing and compelling said defendants, Samuel E. Bryer, to surrender and deliver up and return the said patent to your orator, and that he be forever and perpetually restrained and enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said patent; and your orator prays that the act of sale from the said defendant, Samuel E. Bryers, to the said Wright-Blodgett Company, be declared null and void, and of no effect, and that the said Wright-Blodgett Company be forever and perpetually restrained and enjoined from setting up, asserting or claiming any rights, privileges, benefits or advantages under said act of sale, and that the defendants and each of them be held to pay into the treasury of your orator, all such reasonable sums of

money as it may be found necessary to lay out and expend in  
 and about discovering the fraud, so as hereinbefore set forth  
 and charged, and that your orator may have all such  
 12 further relief in the premises as may be conformable  
 to equity and good conscience, and as such seem  
 proper to this Honorable Court.

May it please your Honors to grant unto your orator a writ  
 of subpoena of the United States of America, issued out of and  
 under the seal of this Court, directed to the said defendant,  
 Samuel E. Bryers, and the said Wright-Blodgett Company,  
 through its proper officers and each of them, on a day certain  
 to appear and answer to this bill of complaint and to abide  
 and perform such order and decree in the premises as the Court  
 shall deem proper and required by the principles of equity  
 and good conscience.

WILLIAM H. MOODY,

Attorney General of the United States.

MILTON C. ELSTNER,

U. S. Attorney, Western District of Louisiana.

United States of America,  
 Western District of Louisiana.

Milton C. Elstner, being first duly sworn, deposes and says:  
 That he is the regularly appointed, qualified and acting United  
 States attorney for the Western District of Louisiana; that  
 he has read the foregoing bill of complaint and knows the  
 contents thereof, and that the matters and facts therein stated  
 and alleged are true to the best of his knowledge, information  
 and belief.

MILTON C. ELSTNER.

Subscribed and sworn to before me, this 3rd day of Decem-  
 ber, A. D. 1906.

W. JACKSON,

Clerk of the United States Circuit Court,  
 5th Circuit, Western District of Louisiana.

Indorsed: No. 380. U. S. Circuit Court. United States  
 vs. Samuel E. Bryers, et al. Bill of Complaint. Filed Dec. 3,  
 1906. W. Jackson, Clerk.



13

United States of America.

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States.

To the Marshal for the Western District of Louisiana—  
Greeting:

You are hereby commanded to summon Wright-Blodgett Company, a corporation organized under the laws of the State of Michigan, and having its domicile at Saginaw, Michigan, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the third Monday of May, 1907, then and there to answer a bill of chancery filed against it, wherein the United States is complainant and Samuel E. Bryers and the Wright-Blodgett Company are defendants.

Herein fail not and have you then and there this writ with your indorsement thereon, how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America at the City of Shreveport, Louisiana, this 3rd day of December in the year of our Lord one thousand nine hundred and six, and the 130 year of American Independence.

[Seal]

W. JACKSON, Clerk.

The defendant, Wright-Blodgett Co., is hereby notified that it is required to enter its appearance in the clerk's office of the United States Circuit Court at Lake Charles, La., on or before the 1st Monday of January, 1907, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 380. United States vs. Samuel E. Bryers, et al. Subpoena in Chancery.

## MARSHAL'S RETURN.

Marshal's Docket No. 478.

Dec. 4, 1906.

Received December 4, 1906, and served by delivering a certified copy hereof to Mitchell & Young, Attys. for Wright-Blodgett Co., at Lake Charles, La., December 6, 1906, in person.

A. C. LEA,

U. S. Marshal.

By B. INGOUF, Deputy.

Filed December 12th, 1906.

W. JACKSON, Clerk.

14

United States of America.

Circuit Court of the United States, Fifth Circuit, Western  
District of Louisiana.

The President of the United States.

To the Marshal for the Western District of Louisiana—  
Greeting:

You are hereby commanded to summon Samuel E. Bryers, a citizen of and residing within the Parish of Vernon, State of Louisiana, to appear before the Honorable Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden at the City of Lake Charles, Louisiana, on the third Monday of May, 1907, then and there to answer a bill in chancery, filed against him, wherein the United States is complainant and Samuel E. Bryers and the Wright-Blodgett Company are defendants.

Herein fail not and have you then and there this writ with your indorsement thereon, how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America at the City of Shreveport, Louisiana, this 3rd day of December in

the year of our Lord one thousand nine hundred and six,  
and the 130 year of American Independence.

[Seal]

W. JACKSON, Clerk.

The defendant, Samuel E. Bryers, is hereby notified that he is required to enter his appearance in the clerk's office of the the United States Circuit Court at Lake Charles, La., on or before the 1st Monday of January, 1907, otherwise the bill may be taken pro confesso.

W. JACKSON, Clerk.

Indorsed: United States Circuit Court, Fifth Circuit, Western District of Louisiana. No. 380. United States vs. Samuel E. Bryers, et al. Subpoena in Chancery.

### MARSHAL'S RETURN.

Marshal's Docket No. 478.

Dec. 4, 1906.

Received December 4, 1906, and served by delivering, in person, a certified copy hereof to within named S. E. Bryers, at Leander, Vernon Ph., La., December 8, 1906.

A. C. LEA,

U. S. Marshal.

By B. INGOUF, Deputy.

Filed December 12th, 1906.

W. JACKSON, Clerk.

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15 In the Circuit Court of the United States for the  
Western District of Louisiana.

United States

vs.

No. 380. In Equity.

Samuel E. Bryers, et al.

Now comes Wright-Blodgett Company, Limited, herein made defendant as Wright-Blodgett Company, in the above entitled proceedings, and, through undersigned counsel, enters

its appearance herein as required by the rules of equity practice.

MITCHELL & YOUNG,  
Attys. for Defendant.

Indorsed: No. 380. In the Circuit Court of the United States for the Western District of Louisiana. United States vs. Samuel E. Bryers, et al. Appearance of Wright-Blodgett Co. Filed Dec. 17, 1906. W. E. Cline, Dy. Clerk.

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16 In the Circuit Court of the United States for the Fifth Circuit and Western District of Louisiana.

The United States of America, Complainant,  
vs. No. 380. In Equity.  
Samuel E. Bryers and Wright-Blodgett Company, Limited,  
Defendants.

The answer of the Wright-Blodgett Company, Limited, one of the defendants to the bill of complaint of the United States, Plaintiff, sayeth:

1. That the matters and things set forth in the first, second, third, fourth and fifth articles of the bill of complaint are true.

2. That if the matters and things set forth in the sixth and seventh articles of the bill of complaint be true, and if the depositions of Samuel E. Bryers and his witnesses were false and fraudulent and made with purpose to deceive, as alleged, said falsity and fraud and purpose to deceive were and are absolutely beyond the knowledge of this defendant, who equally with the officers and agents of the United States, credited and believed said acts and depositions and acted upon the faith thereof in good faith.

3. That the matters and things set forth in the eighth article of the bill of complaint are true to this extent: That the patent issued as alleged to Samuel E. Bryers did entitle the said defendant to exercise the right of absolute ownership

of and over the said lands heretofore mentioned and described, and assert a title to same. That said defendant did so assert a title thereto and did transfer the said title to respondent, who acquired same in good faith for adequate consideration, without notice, either actual or constructive. That if said title was acquired by fraud, respondent had no knowledge of the same, nor had it reason to suspect such fraud.

4. That the matters and things set forth in the ninth article of the bill of complaint are true in this: That it is true that Samuel E. Bryers transferred the said lands to respondent on the 28th day of September, 1901, but it is untrue that Samuel E. Bryers was then without real or apparent title thereto. The fact being that at that time the right to a patent had become vested in the said Bryers, so that he held the full equitable title and the equivalent of the full apparent and legal title, and that the subsequent issuance of the patent was a mere ministerial act which, however, inured to respondent's benefit.

Defendant especially denies that James M. Boyd  
17 or Nat Wasey, or either of them has been or is its agent entrusted with the investigation, solicitation and purchase of lands for its use and benefit; that it, through him or otherwise, knew of the alleged fraudulent acts and statements set forth in the bill of complaint, and it emphatically and especially denies that it did through its officers or otherwise, aid, assist, advise and encourage the commission of the alleged fraudulent acts or have knowledge of or suspect any fraud therein, but respondent avers that as alleged in the bill of complaint, its domicile is in Saginaw, Mich.; that it dealt with Bryers in the premises in good faith and at arm's length; that he held what they believed and were advised was a good title to the lands, which title they acquired in good faith, for a valuable consideration.

Respondent especially denies that it entered into or had knowledge of any conspiracy against the United States in regard to said land and specifically sets forth that until the service of process upon it in this suit, it had no knowledge of and no reason to suspect the claims herein urged.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged without this, that there is any other matter, cause or

thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied as true to the knowledge and belief of this defendant. All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WRIGHT-BLODGETT CO., LTD.  
MITCHELL & YOUNG,  
HALL & MONROE,  
Solicitors for Defendant.

Indorsed: No. 380. United States vs. Samuel E. Bryers, et al. Answer of Wright-Blodgett Co., Ltd. Filed March 15, 1907. W. E. Cline, Dy. Clerk. Ent. Chancery Order Book, Folio 355.

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18 Circuit Court of United States for the Fifth Circuit,  
Western District of Louisiana.

United States of America

vs.

No. 380.

Samuel E. Bryers and the Wright-Blodgett Co., Ltd.

In the above numbered and entitled cause, the following agreement is entered into between M. C. Elstner, United States attorney, and J. Blanc Monroe, attorney for the Wright-Blodgett Co., Ltd.

It is hereby agreed between the parties to this case that at the Lake Charles term of the United States Circuit Court for the Western District of Louisiana, beginning December 21, 1909, or thereabouts, all the testimony, evidence and documents heretofore offered by both sides shall be filed in Court, subject to objections made and to be made to same at Alexandria, and the cases are to be continued for argument to the Alexandria term of Court; this agreement to be filed in the

record. Cases to be continued if Monroe in Washington or for other legal cause.

December 20, 1909.

M. C. ELSTNER,  
U. S. Attorney.  
J. BLANC MONROE.

Indorsed: No. 380. In Equity. U. S. Circuit Court for Fifth Circuit and Western District of Louisiana. United States vs. Samuel E. Bryers and the Wright-Blodgett Co., Ltd. Agreement between U. S. Attorney and J. Blanc Monroe, Atty. for Wright-Blodgett Co., Ltd. Filed at Lake Charles, La., December 22, 1909. Leroy B. Gulotta, Clerk, U. S. Circuit Court.

19

U. S. Circuit Court.

United States of America  
vs. No. 380. In Equity.  
Samuel E. Bryers and Wright-Blodgett Company.

It appearing to the Court that the bill of complaint in this cause was duly filed on the 3rd day of December, 1906, and that a subpoena was duly issued thereon addressed to Samuel E. Bryers and served upon him, and due return thereof made into this Court on the 12th day of December, 1906, and that no appearance was made by the said Samuel E. Bryers, or answer, demurrer or other plea filed by him, and it appearing further that on the . . . . day of . . . . ., 190 . . . an order taking said bill of complaint pro confesso as to the said Samuel E. Bryers was duly taken, allowed and filed in this Court; and it appearing further that since said date, more than the legal delays having elapsed, no answer, demurrer or other plea has been filed herein, and by reason of the law and the evidence being in favor thereof. It is ordered, adjudged and decreed that the patent issued to the said Samuel E. Bryers by the United States of America for the following described lands, to-wit, the west half of the northeast quarter of Section Thirty-four in Township Three, north of Range Five, West, Louisiana Meridian, Vernon Parish, Louisiana, containing seventy-five

and 65/100 acres, be and the same is hereby declared null and void and of no force and effect, and the same is cancelled and annulled. It is further ordered that this defendant, Samuel E. Bryers, pay all costs of this proceeding.

This decree is without prejudice to any rights that the Wright-Blodgett Company may have in this proceeding.

Thus done, read and signed in open Court this 22nd day of December, 1909.

ALECK BOARMAN,  
U. S. Judge.

Indorsed: No. 380. U. S. Circuit Court. United States vs. Samuel E. Bryers and Wright-Blodgett Company. Decree As to Samuel E. Bryers. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 2, Folio 173.

20 Circuit Court of United States for the Fifth Circuit,  
Western District of Louisiana.

United States of America  
vs. No. 380.  
Samuel E. Bryers and the Wright-Blodgett Co., Ltd.

Now comes the Wright-Blodgett Company, Ltd., co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

Wherefore, it now objects to the following testimony and evidence and moves to strike out same:

1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

2. The bills having charged that the Wright-Blodgett Co., Ltd., had knowledge of the fraud charged through a certain individual or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other in-



record. Cases to be continued if Monroe in Washington or for other legal cause.

December 20, 1909.

M. C. ELSTNER,  
U. S. Attorney.  
J. BLANC MONROE.

Indorsed: No. 380. In Equity. U. S. Circuit Court for Fifth Circuit and Western District of Louisiana. United States vs. Samuel E. Bryers and the Wright-Blodgett Co., Ltd. Agreement between U. S. Attorney and J. Blanc Monroe, Atty. for Wright-Blodgett Co., Ltd. Filed at Lake Charles, La., December 22, 1909. Leroy B. Gulotta, Clerk, U. S. Circuit Court.

19

U. S. Circuit Court.

United States of America  
vs. No. 380. In Equity.  
Samuel E. Bryers and Wright-Blodgett Company.

It appearing to the Court that the bill of complaint in this cause was duly filed on the 3rd day of December, 1906, and that a subpoena was duly issued thereon addressed to Samuel E. Bryers and served upon him, and due return thereof made into this Court on the 12th day of December, 1906, and that no appearance was made by the said Samuel E. Bryers, or answer, demurrer or other plea filed by him, and it appearing further that on the . . . day of . . . , 190 . . . an order taking said bill of complaint pro confesso as to the said Samuel E. Bryers was duly taken, allowed and filed in this Court; and it appearing further that since said date, more than the legal delays having elapsed, no answer, demurrer or other plea has been filed herein, and by reason of the law and the evidence being in favor thereof. It is ordered, adjudged and decreed that the patent issued to the said Samuel E. Bryers by the United States of America for the following described lands, to-wit, the west half of the northeast quarter of Section Thirty-four in Township Three, north of Range Five, West, Louisiana Meridian, Vernon Parish, Louisiana, containing seventy-five

and 65/100 acres, be and the same is hereby declared null and void and of no force and effect, and the same is cancelled and annulled. It is further ordered that this defendant, Samuel E. Bryers, pay all costs of this proceeding.

This decree is without prejudice to any rights that the Wright-Blodgett Company may have in this proceeding.

Thus done, read and signed in open Court this 22nd day of December, 1909.

ALECK BOARMAN,  
U. S. Judge.

Indorsed: No. 380. U. S. Circuit Court. United States vs. Samuel E. Bryers and Wright-Blodgett Company. Decree As to Samuel E. Bryers. Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 2, Folio 173.

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20 Circuit Court of United States for the Fifth Circuit,  
Western District of Louisiana.

United States of America  
vs. No. 380.  
Samuel E. Bryers and the Wright-Blodgett Co., Ltd.

Now comes the Wright-Blodgett Company, Ltd., co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

Wherefore, it now objects to the following testimony and evidence and moves to strike out same:

1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

2. The bills having charged that the Wright-Blodgett Co., Ltd., had knowledge of the fraud charged through a certain individual or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other in-

dividuals, on the ground of variance and irrelevancy, and ask that same be stricken out.

3. That there is no allegation in the bills charging invalidity in the entries, on the ground that the entryman sold or agreed to sell, prior to making final proofs, hence any attempt to show such a situation would be irrelevant and a variance, and is subjected to as such, and motion made to strike same out.

4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock is objected to as irrelevant and motion made to strike same out.

It appearing that there are filed herein certain letters passing between the departments of government and the officials thereof, and certain reports of special agents, same are objected to by the Wright-Blodgett Co., Ltd., defendant, on the ground

1. As not the best evidence—hearsay.

2. As unsworn statements of persons not called as witnesses.

3. As *res inter alios acta*, irrelevant and immaterial.

HALL & MONROE,  
MITCHELL & YOUNG.

Indorsed: No. 380. U. S. Circuit Court, Fifth Circuit Western District of Louisiana. United States of America vs Samuel E. Bryers and the Wright-Blodgett Co., Ltd. Motion Filed Dec. 22, 1909. Leroy B. Gulotta, Clerk.

21 United States Circuit Court, Fifth Circuit, Western District of Louisiana.

United States  
vs. No. 380. In Equity.  
Samuel E. Bryers and the Wright-Blodgett Company.

Pursuant to reservation of right, made at the time of the taking of the testimony and the agreement between Milton C. Elstner and J. Blanc Monroe on December 22nd, 1909, the Wright-Blodgett Company makes to the testimony offered by complainant the following objection:

1. It reiterates here every objection noted by it on the stenographer's notes.

2. It objects to any attempt to show knowledge in it, other than through the persons and in the manner specified in the bill, on the ground that same is irrelevant and does not tend to prove or disprove any fact or allegation set at issue by the pleadings in this case, 172 Fed., 950, last ten lines.

3. It objects to the introduction of any evidence of whatsoever nature herein, on the ground that indispensable parties and parties proper to be present are not before the Court.

4. It objects to the entire testimony and documentary evidence of the United States as irrelevant. *Res inter alia acta* hearsay, and not the best evidence.

5. It objects to any attempt to show an agreement by the Wright-Blodgett Company to purchase these lands prior to final receipt, on the ground that no such attack is made in the bills and the testimony is irrelevant, and does not tend to prove or disprove any fact or allegation set as issue by the pleadings in this Court.

Indorsed: No. 380. In Equity. United States Circuit Court, Fifth Judicial Circuit, Western District of Louisiana. United States vs. Samuel Bryers and Wright-Blodgett Company. Exception Filed by Wright-Blodgett Company to Certain Testimony. Filed Feb. 25, 1910. Leroy B. Gulotta, Clerk, U. S. Circuit Court, West. Dist. of Louisiana.

22      In the District Court of the United States for the  
                                  Western District of Louisiana, Fifth Circuit of  
                                  the United States.

United States of America

vs.

No. 380. In Equity.

Samuel E. Bryers and Wright-Blodgett Company.

This case came on for hearing this . . . . day of May, 1912, before the Honorable Aleck Boorman, Judge presiding, and was heard upon the bill, answers, exhibits, proofs in the case and arguments of counsel, and thereupon, upon consideration thereof and by virtue of the law and the evidence being in favor thereof; it was ordered, adjudged and decreed as follows:

It is ordered, adjudged and decreed that the patent described in the bill issued to defendant, Samuel E. Bryers, on the 1st day of April in the year 1902, for the north half (N 1/2) of northeast quarter (NE 1/4) Section Thirty-four (34) Township Three (3) North, Range Five West, La. Mer. containing 76.65 acres, situated in the State of Louisiana; be and the same is hereby declared to be null and void for the said lands and premises described in the bill, as aforesaid, and the defendants, Samuel E. Bryers and Wright-Blodgett Company, be and are hereby required and directed to surrender and deliver and return said patent to the United States of America; and it is further adjudged and decreed that they be forever restrained and enjoined from ever claiming or asserting any right, benefit, privilege or advantage, whatsoever, under said patent. It is further ordered, adjudged and decreed that the defendant pay the costs of this proceeding.

Done, read and signed in open Court at Alexandria, Louisiana, on this 6th day of May, 1912.

ALECK BOARMAN,

U. S. Judge.

Indorsed: No. 380. United States District Court, Western District of Louisiana. United States vs. Samuel E. Bryers and Wright-Blodgett Company. Judgment. Filed May 6, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

## PATENT.

The United States of America.

Certificate No. 21279.

To all to Whom these Presents Shall Come—Greeting:

Whereas, Samuel E. Bryers of Parish of Rapides, La., has deposited in the general land office of the United States a certificate of the register of the land office at Natchitoches, Louisiana, whereby it appears that full payment has been made by the said Samuel E. Bryers, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the Public Lands," and the acts supplemental thereto for the north half of the northeast quarter of Section Thirty-four in Township Three, north of Range Five, west of Louisiana Meridian in Louisiana, containing seventy-five acres and sixty-five hundredths of an acre, according to the official plat of the survey of the said lands, returned to the general land office by the surveyor general, which said tract has been purchased by the said Samuel E. Bryers.

Now know ye, that the United States of America in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted and by these presents do give and grant unto the said Samuel E. Bryers and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said Samuel E. Bryers and to his heirs and assigns forever.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand at the City of Washington the first day of April in the year of our Lord one thousand nine hun-

dred and two and of the Independence of the United States the one hundred and twenty-sixth.

[Seal]

By the President: T. ROOSEVELT.

By F. M. McKEAN,

Secretary.

C. H. BURTH,

Recorder of the General Land Office.

Recorded Louisiana,

Vol. 127, page 267.

24 Indorsed: #21279. Entered. Samuel E. Bryers. Patent. Filed 11 day of April, 1902, and recorded in Vol. No. 1, page 419. Patent Record, Vernon Parish. (Seal) J. J. Hicks, Clerk; by . . . . ., Deputy. Filed in 380, Mch. 1st, '09. J. F. Slattery, M. in Ch.

25 State of Louisiana,  
Parish of Vernon.

Know all men by these presents, that I, Samuel E. Bryers, (single) of the Parish of Vernon, State of Louisiana, and in consideration of the sum of two hundred and eighty-six (286.00) dollars to me in hand paid by Wright-Blodgett Company, Limited, a firm or corporation organized and existing under the laws of the State of Michigan, and domiciled at Saginaw, Michigan, have granted, sold and delivered, and by these presents do grant, sell and deliver with full subrogation to all of my rights and actions of warranty against all former owners and vendors unto the said Wright-Blodgett Company, Limited, of the City of Saginaw and State of Michigan, all that certain lot or parcel of land situated and being in the Parish of Vernon and State of Louisiana, known and described as follows, to-wit, the north half of the northeast quarter of Section Thirty-four in Township Three, north of Range Five, West, La. Mer., containing in all the sum of seventy-five acres and sixty-five hundredths of an acre, more or less, according to the government survey thereof.

To have and to hold the above described premises together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said Wright-Blodgett Company,

Limited, its successors and assigns forever, and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Wright-Blodgett Company, Limited, its successors, heirs and assigns, against any person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand at Sigler, La., in the presence of Nat Wasey and A. H. Davis, lawful witnesses, on this 28th day of September, Anno Domini, one thousand nine hundred and one.

his  
SAMUEL E. X BRYERS.  
mark

Attest :

NAT WASEY.  
A. H. DAVIS.

26      State of Louisiana,  
          Parish of Rapides.

Before me, Jno. W. Britt, a notary public in and for said parish and state, duly commissioned and qualified, personally came and appeared Nat Wasey, to me well known, one of the attesting witnesses to the within and foregoing private act of sale of land, who being first duly sworn, says that he saw the contracting parties sign the same, also saw the other witness sign, and signed himself as such, on the day and date therein mentioned and that he verily believes the same was done in good faith and for the uses, purposes and considerations therein set forth.

NAT WASEY.

Sworn to and subscribed to at Glenmora, Louisiana, this 30th day of September, 1901.

Before me :

[Seal]

JNO. W. BRITT,  
Notary Public.

Filed for record October 10th, 1901; recorded October 21, 1901.

W. A. WINFREE,  
Dy. Clerk & ex-Officio Recorder.



State of Louisiana,  
Parish of Vernon.

I hereby certify that the above and foregoing is a true and correct copy as the same appears on record in my office in the Town of Leesville, Vernon Parish, Louisiana, in Conveyance Book "U" at folio 77 et seq.

In testimony whereof, I have hereunto set my hand and affixed my official seal of office on this the 23rd day of February, A. D. 1909.

A. G. WINFREE,

[Seal] Clerk 12th District Court, Vernon Parish, La.

Indorsed: S. E. Bryers to Wright-Blodgett Co. U. S. vs. S. E. Bryers, et al. J. F. Slattery, M. in C.

27

United States

vs.

No. 380.

S. E. Bryers, et al.

Abstract of Title to Wright Blodgett Company, Limited, From the Notarial and Abstract Office of J. J. Hicks, Leesville, La.

W. 1/2 of N. E. 1/4, S. E. 1/4 of N. E. 1/4 and N. W. 1/4 of S. E. 1/4 of Sec. 1, Twp. 1 S., Range 6 W.; W. 1/2 of N. W. 1/4 of Sec. 12, Twp. 1 S., Rng. 7 W.; N. E. 1/4 of N. W. 1/4 of Sec. 10, Twp. 1 S., Rng. 7 W.; S 1/2 of N. E. 1/4 of Sec. 1, Twp. 1 S., R. 7 W.; N. 1/2 of N. E. 1/4 of Sec. 34, Twp. 3 N., Rng. 5 W.; S. E. 1/4 of N. E. 1/4, N. E. 1/4 of S. E. 1/4 of Sec. 10, T. 1 S., R. 7 W.; S. 1/2 of N. W. 1/4 & S. 1/2 of N. E. 1/4 of Sec. 2, Twp. 2 N., Rng. 5 West; S. 1/2 of S. E. 1/4 of Sec. 29, Twp. 1 N., Rng. 7 W., S. E. 1/4 of S. E. 1/4 of Sec. 33, Twp. 1 N., Rng. 7 W., and 30 acres from the east side of S. E. 1/4 of S. E. 1/4 of Sec. 35, Twp. 1 S., Range 7 West, in Vernon Parish, La.

28

Charles P. Johnston, Rec., Vendor.  
Ellen Delana, Vendee.

Instrument, Final Rect.

|                        | Month. | Day. | Year. |
|------------------------|--------|------|-------|
| Date of instrument,    | Oct.   | 1,   | 1901. |
| Date of ackn'ment,     | Oct.   | 1,   | 1901. |
| No. of witnesses, ———. |        |      |       |

Officer before whom authenticated, Charles B. Johnston,  
Rec.

|                 | Month.            | Day.      | Year. |
|-----------------|-------------------|-----------|-------|
| When filed,     | Oct.              | 17,       | 1901. |
| Where recorded, | Book P. R. No. 1, | page 280. |       |
| Consideration,  | \$200.            |           |       |

Part of Section.

W. 1/2 of N. E. 1/4, S. E. 1/4 of N. E. 1/4 & N. W. 1/4  
of S. E. 1/4, Sec. 1, Twp. South 1 S., Range West. 6 W. No.  
of acres, 160.20. Remarks, ———.

Ellen Delana, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                      | Month. | Day. | Year. |
|----------------------|--------|------|-------|
| Date of instrument,  | Sept.  | 20,  | 1901. |
| Date of ackn'ment,   | Sept.  | 23,  | 1901. |
| No. of witnesses, 2. |        |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|                 | Month.    | Day.     | Year. |
|-----------------|-----------|----------|-------|
| When filed,     | Sept.     | 24,      | 1901. |
| Where recorded, | Book U,   | page 66. |       |
| Consideration,  | \$800.00. |          |       |

Part of Section.

W. 1/2 of N. E. 1/4, S. E. 1/4 of N. E. 1/4 & N. W. 1/4  
of S. E. 1/4, Sec. 1, Twp. South, 1 S., Range West 6 W. No.  
of acres, 160.20.

Witnesses to signature of Ellen Delana:

NAT WASEY,  
JAMES M. BOYD.

Charles P. Johnston, Recr., Vendor.  
Hugh McDonald, Vendee.

Instrument, Final Receipt.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oet.   | 1,   | 1901. |
| Date of ackn'ment,  | Oet.   | 1,   | 1901, |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, Charles P. Johnston,  
Recr.

|                 | Month.                      | Day. | Year. |
|-----------------|-----------------------------|------|-------|
| When filed,     | Oet.                        | 10,  | 1901. |
| Where recorded, | Book P. R. No. 1, page 277. |      |       |
| Consideration,  | \$111.07.                   |      |       |

Part of Section, W. 1/2 of N. W. 1/4, Sec. 12, Twp. South  
1 S., Range West. 7 W. No. of acres, 88.86.

29

Hugh McDonald, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oet.   | 5,   | 1901. |
| Date of ackn'ment,  | Oet.   | 7.   | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|                 | Month.           | Day. | Year. |
|-----------------|------------------|------|-------|
| When filed,     | Oet.             | 10,  | 1901. |
| Where recorded, | Book U, page 74. |      |       |
| Consideration,  | \$380.00.        |      |       |

Part of Section.

W. 1/2 of N. W. 1/4, Sec. 12, Twp. South 1 S., Range  
West 7 W. No. of acres, 88.86.

Witnesses to signature of Hugh McDonald:

JAMES M. BOYD,  
NAT WAZEY.

Charles P. Johnston, Rec., Vendor.  
Thomas J. Perkins, Vendee.

Instrument, Final Recept.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Oct.   | 1,   | 1901. |
| Date of ackn'ment,  | Oct.   | 1,   | 1901. |
| No. of witnesses, — |        |      |       |

Officer before whom authenticated, Charles P. Johnston,  
Receiver.

|                            | Month.         | Day. | Year. |
|----------------------------|----------------|------|-------|
| When filed,                | Oct.           | 10,  | 1901. |
| Where recorded, Book P. R. | # 1, page 276. |      |       |
| Consideration, \$49.58.    |                |      |       |

Part of Section.

N. E. 1/4 of N. W. 1/4, Sec. 10, Twp. South 1 S., Range  
West 7 W. No. of acres, 39.67.

Thomas J. Perkins, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                      | Month. | Day. | Year. |
|----------------------|--------|------|-------|
| Date of instrument,  | Oct.   | 5,   | 1901. |
| Date of ackn'ment,   | Oct.   | 7,   | 1901. |
| No. of witnesses, 2. |        |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|                         | Month.   | Day. | Year. |
|-------------------------|----------|------|-------|
| When filed,             | Oct.     | 10,  | 1901. |
| Where recorded, Book U, | page 70. |      |       |
| Consideration, \$140.   |          |      |       |

Part of Section.

N. E. 1/4 of N. W. 1/4, Sec. 10, Twp. South 1 S., Range  
West 7 W. No. of acres, 39.67.

Witnesses to signature of Thomas J. Perkins:

JAMES M. BOYD,  
NAT WASEY.

30

Charles P. Johnston, Recr., Vendor.  
James F. Calhoun, Vendee.

Instrument, Final Rept.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 17,  | 1901. |
| Date of ackn'ment,  | Sept.  | 17,  | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, Charles P. Johnston,  
Recr.

|   | Month. | Day. | Year. |
|---|--------|------|-------|
| When filed,                                 | Oct.   | 10,  | 1901. |
| Where recorded, Book P. R. No. 1, page 276. |        |      |       |
| Consideration, \$112.27.                    |        |      |       |

Part of Section.

S. 1/2 of N. E. 1/4, Sec. 1, Twp. South 1 S., Range West,  
7 W. No. of acres, 89.82.

James F. Calhoun, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sept.  | 30,  | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|                                  | Month. | Day. | Year. |
|----------------------------------|--------|------|-------|
| When filed,                      | Oct.   | 10,  | 1901. |
| Where recorded, Book U, page 80. |        |      |       |
| Consideration, \$310.00.         |        |      |       |

Part of Section.

S. 1/2 of N. E. 1/4, Sec. 1, Twp. South 1 S., Range West,  
7 W. No. of acres, 89.82.

Witnesses to signature of Jas. F. Calhoun:

NAT WASEY,

JAMES M. BOYD.

C. J. Grina, Receiver, Vendor.  
Samuel E. Bryers, Vendee.

Instrument, Final Receipt.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 18,  | 1901. |
| Date of ackn'ment,  | Sept.  | 18,  | 1901. |

No. of witnesses, —.

Officer before whom authenticated, C. J. Grinee, receiver.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book P. R. No. 1, page 278.

Consideration, \$189.13.

#### Part of Section.

N. 1/2 of N. E. 1/4, Sec. 34, Twp. South 3 N., Range West  
5 W. No. of acres, 75.65.

31

Samuel E. Bryers, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sept.  | 30,  | 1901. |

No. of witnesses, 2.

Officer before whom authenticated, Jno. W. Britt, N. P.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book U, page 77.

Consideration, \$280.00.

#### Part of Section.

N. 1/2 of N. E. 1/4, Sec. 34, Twp. South 3 N., Range West  
5 W. No. of acres, 75.65.

Witnesses to signature of Samuel E. Bryers:

NAT WASEY.

A. H. DAVIS.

Charles P. Johnston, Rer., Vendor.  
Thomas Q. Wright, Vendee.

Instrument, Final Rept.

|                        | Month. | Day. | Year. |
|------------------------|--------|------|-------|
| Date of instrument,    | Oct.   | 1,   | 1901. |
| Date of ackn'ment,     | Oct.   | 1,   | 1901. |
| No. of witnesses, ———. |        |      |       |

Officer before whom authenticated, Charles P. Johnston  
Rer.

|   | Month. | Day. | Year. |
|---|--------|------|-------|
| When filed,                                 | Oct.   | 10,  | 1901. |
| Where recorded, Book P. R. No. 1, page 277. |        |      |       |
| Consideration, \$99.17.                     |        |      |       |

Part of Section.

S. E. 1/4 of N. E. 1/4, N. E. 1/4 of S. E. 1/4, Sec. 10,  
Twp. South, 1 S., Range West 7 W. No. of acres, 79.34.

Thomas Q. Wright, Vendor.  
Wright-Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                      | Month. | Day. | Year. |
|----------------------|--------|------|-------|
| Date of instrument,  | Oct.   | 5,   | 1901. |
| Date of ackn'ment,   | Oct.   | 7,   | 1901. |
| No. of witnesses, 2. |        |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|                                  | Month. | Day. | Year. |
|----------------------------------|--------|------|-------|
| When filed,                      | Oct.   | 10,  | 1901. |
| Where recorded, Book U. page 75. |        |      |       |
| Consideration, \$280.00.         |        |      |       |

Part of Section.

S. E. 1/4 of N. E. 1/4, N. E. 1/4 of S. E. 1/4, Sec. 10, Twp.  
South 1 S., Range West 7 W. No. of acres, 79.34.

Witnesses to signature of Thomas Q. Wright:  
GENTRY JOHNSON,  
NAT WASEY.

32

C. J. Greene, Receiver, Vendor.  
Samuel S. Akin, Jr., Vendee.

Instrument, Final Rept.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 18,  | 1901. |
| Date of ackn'ment,  | Sept.  | 18,  | 1901. |

No. of witnesses, —.

Officer before whom authenticated, C. J. Greene, Receiver.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Recorded, P R No. 1, Book, page 278.

Consideration, \$400.

#### Part of Section.

S. 1/2 of N. W. 1/4 and S. 1/2 of N. E. 1/4, Sec. 2, Twp.  
South 2 N., Range West 5 W. No. of acres, 163.42.

Samuel S. Akin, Jr., Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sep.   | 30,  | 1901. |

No. of witnesses, 2.

Officer before whom authenticated, Jno. W. Britt, N. P.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book V, page 69.

Consideration, \$770.00.

#### Part of Section.

S. 1/2 of N. W. 1/4, S. 1/2 of N. E. 1/4, Sec. 2, Twp. South  
2 N., Range West 5. No. of acres, 163.42.

Witnesses to signatures of Samuel S. Akin, Jr.:

NAT WASEY.

JAMES M. BOYD.



C. J. Greene, Receiver, Vendor.  
George W. Johnson, Vendee.

Instrument, Final Recpt.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 23,  | 1901. |
| Date of ackn'ment,  | Sept.  | 23,  | 1901. |
| No. of witnesses,   | —.     |      |       |

Officer before whom authenticated, C. J. Greene, Rec.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book P R No. 1, page 278.

Consideration, \$100.00.

Part of Section.

S. 1/2 of S. E. 1/4, Sec. 29, Twp. South 1 N., Range West  
7 W. No. of acres, 80.

33

George W. Johnson, Vendor.  
Wright-Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sept.  | 30,  | 1901. |
| No. of witnesses,   | 2.     |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book I', page 79.

Consideration, \$240.00.

Part of Section.

S. 1/2 of S. E. 1/4 and five acres out of the southeast corner  
of southeast quarter of southwest quarter, excepting and re-  
serving about fourteen acres where my house and field now  
stands, Sec. 29, Twp. South 1 N., Range West 7 W. No. of  
acres, 80.

Witnesses to signature of Geo. W. Johnson:

NAT WASEY.

JAMES M. BOYD.

C. J. Greene, Receiver, Vendor.  
Gipson Johnson, Vendee.

Instrument, F. R.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 23,  | 1901. |
| Date of ackn'ment,  | Sept.  | 23,  | 1901. |

No. of witnesses, —.

Officer before whom authenticated, C. J. Greene, Receiver.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book P. R. No. 1, page 279.

Consideration, \$50.00.

#### Part of Section.

S. E. 1/4 of S. E. 1/4, Sec. 33, Twp. South 1 N., Range  
West 7 W. No. of acres, 40.67.

Gipson Johnson, Vendor.  
Wright Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                     | Month. | Day. | Year. |
|---------------------|--------|------|-------|
| Date of instrument, | Sept.  | 28,  | 1901. |
| Date of ackn'ment,  | Sept.  | 30,  | 1901. |

No. of witnesses, 2.

Officer before whom authenticated, Jno. W. Britt, N. P.

|             | Month. | Day. | Year. |
|-------------|--------|------|-------|
| When filed, | Oct.   | 10,  | 1901. |

Where recorded, Book U, page 67.

Consideration, \$162.00.

#### Part of Section.

S. E. 1/4 of S. E. 1/4, Sec. 33, Twp. South 1 N., Range  
West 7 W. No. of acres, 40.67.

Witnesses to signature of Gipson Johnson:

NAT WASEY,

JAMES M. BOYD.

34

United States, Vendor.  
Thomas J. Wisby, Vendee.

Instrument, Patent.

|                          | Month. | Day. | Year. |
|--------------------------|--------|------|-------|
| Date of instrument, Meh. | 23,    |      | 1901. |
| Date of ackn'ment, Meh.  | 23,    |      | 1901. |
| No. of witnesses, —.     |        |      |       |

Officer before whom authenticated, William McKinley, Pres.  
U. S.

|   | Month. | Day. | Year. |
|---|--------|------|-------|
| When filed, Oct.                          | 10,    |      | 1901. |
| Where recorded, Book P R No. 1, page 280. |        |      |       |
| Consideration, —.                         |        |      |       |

Part of Section.

S. E. 1/4 of S. E. 1/4, together with other lands, Sec. 35,  
Twp. South 1 S., Range West, 7 W. No. of acres, 40, more or  
less.

Thomas J. Wisby, Vendor.  
Wright-Blodgett Co., Ltd., Vendee.

Instrument, Wty. Deed.

|                          | Month. | Day. | Year. |
|--------------------------|--------|------|-------|
| Date of instrument, Oct. | 5,     |      | 1901. |
| Date of ackn'ment, Oct.  | 7,     |      | 1901. |
| No. of witnesses, 2.     |        |      |       |

Officer before whom authenticated, Jno. W. Britt, N. P.  
When [where] filed, Book U, page 73.  
Consideration, \$100.00.

Part of Section.

Thirty acres from the east side of S. E. 1/4 of S. E. 1/4,  
Sec. 35, Twp. South 1 S., Range West 7 W. No. of acres, 30.

Witnesses to signature of Thomas J. Wisby:

JAMES M. BOYD,  
NAT WASEY.

State of Louisiana,  
Parish of Vernon.

Office of the 12th Judicial District Court & Ex Officio Recorder in and for the State and Parish aforesaid.

I do hereby certify that I have made a careful examination of the above abstract of title to Wright-Blodgett Company, Limited, and according to the records of the aforesaid parish and State the said Wright-Blodgett Co., Ltd., are owners of the property above described. I further certify that there are no mortgages, liens nor incumbrances of record against the property above described. I further certify that there are no suits pending or judgments against the parties named, or property described above in said parish and State. I further certify that the property is duly recorded in the records of Vernon Parish, Louisiana, in the name of the parties above mentioned and property indexed.

Given under my hand and seal of office at Leesville, Vernon Parish, Louisiana, October 22, 1901.

W. A. WINFREE,

[Seal]

Dy Clerk & Ex Officio Recorder.

Indorsed: U. S. vs. S. E. Bryers, et al. No. 380. Filed Mar. 1, 1909. Abstract of title to Wright-Blodgett Company, Limited, from the notarial and abstract office of J. J. Hicks, Leesville, La.

36

Law Office of  
Pujo & Moss,

First National Bank  
Building.  
Ryan Street.

Arsene P. Pujo.  
Clement D. Moss.

Lake Charles, La., December 23rd, 1901.

We hereby certify that we have carefully examined the foregoing abstract of title to the W. 1/2 of N. E. 1/4, S. E. 1/4 of N. E. 1/4 and N. W. 1/4 of S. E. 1/4 of Section 1, Township 1, South, Range 6 West; west half of N. W. 1/4 of Section 12, Township 1 South, Range 7 West; N. E. 1/4 of N. W. 1/4 of Section 10, Township 1 South, Range 7 West; S. 1/2 of N. E. 1/4 of Section 1, Township 1 South, Range 7 West; N. 1/2 of N. E. 1/4 of Section 34, Township 3 North,

Range 5 West; S. E. 1/4 of N. E. 1/4, N. E. 1/4 of S. E. 1/4 of Section 10, Township 1 South, Range 7 West; S. 1/2 of N. W. 1/4 and S. 1/2 of N. E. 1/4 of Section 2, Township 2 North, Range 5 West; S. 1/2 of S. E. 1/4 of Section 29, Township 1 North, Range 7 West; S. E. 1/4 of S. E. 1/4 of Section 33, Township 1 North, Range 7 West and 30 acres from the East side S. E. 1/4 of S. E. 1/4 of Section 35, Township 1 South, Range 7 West, in Vernon Parish, Louisiana, standing of record in the name of the Wright-Blodgett Company, Limited, and it is our opinion that the title thereto is good and valid, and that said property is legally vested in said company at this date.

We find that the abstract shows no title for the "five acres conveyed by George W. Johnson to said company in the southeast corner of the southeast quarter of the southwest quarter of Section 29 excepting and reserving about 14 acres for house," etc., but are informed that the company already owns said five acres by purchase from a former vendor.

Respectfully submitted,

PUJO & MOSS.

37

P  
AR

W H T

J. O. C.

J/Y

Department of the Interior,

General Land Office,

Washington, D. C., September 21, 1906.

I. W. A. Richards, Commissioner of the General Land Office, do hereby certify that the annexed copies, pages 1 to 27 inclusive, papers in C. C. Entry No. 21279 of Samuel E. Bryers, Natchitoches, La., land district, together with report of Special Agent Clayton G. Coleman, June 20, 1906, are true and literal exemplifications of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal]

W. A. RICHARDS,  
Commissioner of the General Land Office.

38 Application No. 8252.

Homestead.

Department of the Interior,

United States Land Office.

Natchitoches, La., Jan. 31, 1900.

I, Samuel E. Bryers, of Hineston, Rapides, La., do hereby apply to enter, under Section 2289 [2289], Revised Statutes of the United States, the N. 1/2 of N. E. 1/4 of Section 34, in Township 3 N. of Range 5 W., La Mer., containing 75 65/100 acres.

his

SAMUEL E. x BRYERS.  
mark

United States Land Office,

Natchitoches, La., Jan. 31, 1900.

I, J. Ernest Breda, Register of the Land Office, do hereby certify that the above application is for surveyed lands of the class which applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

J. ERNEST BREDA, Register.

Indorsed: No. 8252. Homestead application Samuel E. Bryers, Natchitoches, La. Jan. 31, 1900. Fees 5. Com. 3.98—8.98. Sec. 34, Township 3, Range 5. 4/144. 128796. U. S. Land Office. Received Aug 9, 190

39

Homestead Affidavit.

Department of the Interior.

United States Land Office, at

Natchitoches, La., Jan. 31, 1900.

I, Samuel E. Bryers, of Hineston, La., having filed my application, No. 8252, for an entry under Section 2289, Revised

Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am \*a native born citizen of the United States of America, over 21 years of age and single; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent for any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws.

(Sign plainly with full Christian name.)

his

SAMUEL E. BRYERS.

mark

Sworn to and subscribed before me this 31st day of Jan. 1900, at my office at Natchitoches, in Natchitoches County, Louisiana.

J. ERNEST BREA,.

[Seal]

Register.

\*Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family, or is over

twenty-one years of age, as the case may be. It should be stated whether applicant is native born or not, and if not, a certified copy of his certificate of naturalization, or declaration of intention, as the case may be, must be furnished. (See page 45, circular of January 1, 1899.)

40      Receiver's Receipt, No. 825.      Application, No. 8252.

Homestead.

Receiver's Office.

Natchitoches, La., January 31st, 1900.

Received of Samuel E. Bryers the sum of eight dollars, ninety-eight cents; being the amount of fee and compensation of register and receiver for the entry of north half of north-east quarter of Section thirty-four, in Township three, north of Range five W., La. Mer., under Section No. 2290, Revised Statutes of the United States.

C. J. GREENE, Receiver.

\$8.98.

**Note**—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

\*\*\*\*\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the lands and improve the premises, but for no other purpose. If, after clearing the land for cultivation, there remains more



timber than is required for improvement, there is no objection of the settler disposing of the same. But the question whether the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for the recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*\*\*\*\*See note in red ink, which registers and receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

41            No. 1.        Homestead.        Commutation.

Land Office at Natchitoches, La.

July 10, 1901.

I, Samuel E. Bryers, of Cora, Vernon Ph., La., who made homestead application No. 8252, for the N. 1/2 of N. E. 1/4, Sec. 34, Tp. 3, N. R. 5 W., La. Mer., do hereby give notice of my intention to make final commutation proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before James M. Boyd, U. S. Com., at Cora, La., on Aug. 17, 1901, by two of the following witnesses:

Marion Ingalls, of Cora, La.

Willie White, of Cora, La.

Leon Smith, of Cora, La.

E. Z. Boyd, of Cora, La.

SAMUEL E. BRYERS.  
(Signature of Claimant.)

Land Office at Natchitoches, La.

Jul. 10, 1901.

Notice of the above application will be published in the Vernon News, printed at Leesville, La., and which I hereby

designate as the newspaper published nearest the land described in said application.

J. ERNEST BREDA, Register.

Notice to Claimant—Give time and place of proving up and name the title of the officer before whom proof is to be made; also give names and postoffice address of four neighbors, two of whom must appear as your witnesses.

Indorsed: No. 8252. Samuel E. Bryers, Commutation. 34—3—5. Vernon News, July 10 to Aug. 17/01.

42 State of Louisiana,  
Parish of Vernon.

Before me, the authorized authority, on this day personally appeared Geo. F. Smedley, editor of the Vernon News, Leesville, Louisiana, who, first being duly sworn, says that notice of Samuel E. Bryers' final proof of his H. E. No. 8252, first appeared in its issue of July 11, 1901, and each weekly issue thereafter for 30 days, last publication appearing in the issue of August 24th, 1901.

GEO. F. SMEDLEY, Editor.

Sworn to and subscribed before me at my office at Leesville, La., this the 17th day of August, 1901.

JAMES M. BOYD,

[Seal]

U. S. Com.

Notice for Publication.

Department of the Interior.

Land Office at Natchitoches, La.

July 10th, 1901.

Notice is hereby given that the following named settler has filed notice of his intention to make final commutation proof in support of his claim, and that said proof will be made before James M. Boyd, U. S. Com. at Cora, La., on Aug. 17, 1901, viz: H. E. No. 8252, Samuel E. Bryers, for the N. 1/2 N. E. 1/4, Sec. 34, T. 3 North, R. 5 W., La. Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

Marion Ingalls, Willie White, Leon Smith, E. Z. Boyd, all of Cora, P. O. La.

J. ERNEST BREDA, Register.

Indorsed: 8252. Publisher certificate.

43 Certificate as to Posting of Notice.

Department of the Interior,

United States Land Office, at Natchitoches, La.

Sept. 18, 1901.

I, J. Ernest Breda, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 10 day of July, 1901.

J. ERNEST BREDA, Register.

Indorsed: 8252. Posting certificate.

44 Notice for Publication.

Department of the Interior.

Land Office at Natchitoches, La.

July 10th, 1901.

Notice is given that the following named settler has filed notice of his intention to make final commutation proof in support of his claim, and that said proof will be made before James M. Boyd, U. S. Com. at Cora, La., on Aug. 17, 1901, viz: H. E. No. 8252, Samuel E. Bryers, for the N. 1/2 N. E. 1/4, Sec. 34, T. 3 N., R. 5 W., La. Mer.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz.:

Marion Ingalls, Willie White, Leon Smith, E. Z. Boyd, all of Cora, P. O. La.

J. ERNEST BREDA, Register.

45 (To be used in cases of commuted homestead entries. For taking the testimony of claimant and his witnesses in making commutation proof, use the prescribed forms for "Homestead Proof.")

Affidavit Required of Claimant.

(Section 2301 of the Revised Statutes of the United States.)

I, Samuel E. Bryers, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 8252, made upon the N. 1/2 of N. E. 1/4, Section 34, Township 3 N. Range 5 W., do solemnly swear that I made settlement upon said land on the 1st day of February, 1900, and that since such date, to-wit, on the 17th day of August, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated about 2 acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except .....

(Sign plainly with full Christian name.)

his  
SAMUEL E. x BRYERS.  
mark

Subscribed and sworn to before me this 17th day of August, 1901, at my office at Cora, in Vernon Ph., Louisiana.

JAMES M. BOYD,

[Seal]

U. S. Com.

Indorsed: 8252. Commutation affidavit.

## 46 Homestead Proof—Testimony of Witness.

I, LEON SMITH, being called as witness in support of the homestead entry of Samuel E. Bryers, for N. 1/2 N. E. 1/4, Sec. 34, Tp. 3 N., R. 5 W., La. Mer., testifies as follows:

Ques. 1. What is your name, age, and postoffice address?

Ans. Leon Smith, age 22 years, Cora, Vernon Ph. La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Ordinary pine, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. February 1st, 1900, and established actual residence at the same time.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. They have.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent at all.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 9. What improvements are on the land, and what is their value?

Ans. One lumber house, 12x12, barn, orchard and water, valued at \$75.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what

they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead.

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he has.

LEON SMITH.

(Sign plainly with full Christian name.)

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 17th day of August, 1901, at my office at Cora, in Vernon Ph., Louisiana.

(See note on fourth page.)

JAMES M. BOYD,

[Seal]

U. S. Com. for W. D. of La.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

#### 48 Homestead Proof—Testimony of Witnesses.

I. E. Z. BOYD, being called as a witness in support of the homestead entry of Samuel E. Bryers, for N. 1/2 N. E. 1/4, Sec. 34, Tp. 3 N., R. 5 W., La. Mer., testifies as follows:

Ques. 1. What is your name, age and postoffice address?

Ans. E. Z. Boyd, age 27 years, Cora, Vernon Ph., La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated

town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Ordinary pine land, some timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. February 1st, 1900, and established actual residence at the same time.

6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. He has. The settler is married.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent at all.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 9. What improvements are on the land, and what is their value?

Ans. One lumber house, 12x12, barn, orchard, stables and water, valued at \$75.00.

Ques. 10. Are there any indications of coal,  
49           salines, or minerals of any kind on the homestead?

(If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. Think he has.

E. Z. BOYD.

(Sign plainly with full Christian name.)

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 17th day of August, 1901, at my office at Cora, in Vernon Ph., Louisiana.

(See note on fourth page.)

[Seal]

JAMES M. BOYD,  
U. S. Com. for W. D. of La.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.

#### 50 Homestead Proof—Testimony of Claimant.

I, SAMUEL E. BRYERS, being called as a witness in his own behalf in support of homestead entry, No. 8252, for N. 1/2 N. E. 1/4, Sec. 34, Tp. 3 N., R. 5 W., La. Mer., testified as follows:

Ques. 1. What is your name, age and postoffice address?

Ans. Samuel E. Bryers, age 23 years, Hineston, Rapides.

Ques. 2. Are you a native born citizen of the United States, and if so, in what State or Territory were you born?\*

Ans. I am, was born in La.

Ques. 3. Are you the identical person who made homestead entry No. 8252, at the Natchitoches Land Office, on the 31st day of January, 1900, and what is the description of the land now claimed by you?

Ans. I am. N. 1/2, N. E. 1/4, Sec. 34, Tp. 3 N., R. 5 W., La. Mer.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. February 1st, 1900, and established actual residence at the same time. One lumber house, 12x12, crib & orchard, valued at \$80.00.

Ques. 5. Of whom does your family consist; and have you



and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Myself. I have resided continuously. The settler is unmarried.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. I have not been absent at all.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. About 2 acres, raising two crops thereon.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable?

Ans. Ordinary pine land, valuable for farm and timber purposes.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as I know of.

Ques. 11. Have you ever made any other homestead entry. (If so, describe the same.)

Ans. I have not.

Ques. 12. Have you sold, conveyed or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. I have not.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same and state where the same is kept.)

Ans. I have not.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. I have not made any of any kind only one above mentioned.

his  
 SAMUEL E. x BRYERS,  
 mark  
 (Sign plainly with full Christian name.)

“(In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.)

2 I hereby certify that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me this 17th day of August, 1901, at my office at Cora, in Vernon Ph., Louisiana.  
 (See note below.)

JAMES M. BOYD,  
 U. S. Com. for W. D. of La.

Note—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

#### Title LXX.—Crimes.—Ch. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any

court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Indorsed: Homestead proof. Land office at Natchitoches, La. Original application No. 8252. Final certificate No. 21279. Approved: J. Ernest Breda, Register; C. J. Green, Receiver. 75.65A. Com. \$189.13; fees, 725 wds, 1.09—190.22. U. S. Land Office, Natchitoches, La. Received on August 26, 1901, 9 o'clock.

53 Receiver's Duplicate Receipt No. 8252.

Application No. 8252.

Homestead.

Receiver's Office, Natchitoches, La.

January 31st, 1900.

Received of Samuel E. Bryers the sum of eight dollars, ninety-eight cents, being the amount of fee and compensation of register and receiver for the entry of N. 1/2 of N. E. 1/4 of Section 34, in Township 3 North, of Range 5 W., La. Mer., under Section 2290, Revised Statutes of the United States.

C. J. GREENE, Receiver.

\$8.98. OK

75.65 acres at \$2.50.

Note—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years, he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and cultivation from the date of filing affidavit to the time of payment.

\*Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land

and improve the premises, but for not other purposes. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question the land is being cleared for its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancelation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

\*See note in red ink, which registers and receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

Indorsed: No. 380. Filed in evidence in No. 380 and marked Exhibit "B." Feb. 27, 1909. J. F. Slattey, M. in C.

54 No. 21279.

Receiver's Office at Natchitoches, La.

Sept. 18, 1901.

Received from Samuel E. Bryers, of Hineston P. O., Rapides, Ph., Louisiana, the sum of one hundred eighty-nine dollars and thirteen cents; being in full for the N. 1/2 of N. E. 1/4 quarter of Section No. 34, in Township No. 3 N., of Range No. 5 W., La. Mer., containing seventy-five acres and sixty-five hundredths, at \$2.50 per acre.  
\$189.13.

C. J. GREENE, Receiver.

\$1.09 testimony fee received. Number of written words 725. Rate per 100 words, 15 cents. Under Sec. 2301 R. S. Orig. Hd. 8252. D. M. L.

55 No. 21279.

Receiver's Office at Natchitoches, La.

Sept. 18th, 1901.

Received from Samuel E. Bryers, of Hineston P. O., Rapides Ph., Louisiana, the sum of one hundred eighty-nine dol-

lars and thirteen cents; being in full for the N. 1/2 of N. E. 1/4 of Section No. 34, in Township No. 3 N., of Range No. 5 W., La. Mer., containing seventy-five acres and sixty-five hundredths, at \$2.50 per acre.

C. J. GREENE, Receiver.

\$189.13.

\$1.09 testimony fee received. Number of written words 725. Rate per 100 words, 15 cents. Under Sec. 2301, R. S. Orig. Hd. 8252. D. M. L.

Indorsed: No. 21279. Boyd. Sigler P. O. La. Rec'd \$190.65; fees, 190.22; due you, .43. C. J. Greene to Samuel E. Bryers, final receipt. Filed 10 day of Oct. 1901, and recorded in Vol. No. 1, page 278, patent record, Vernon Parish. [Seal] W. A. Winfree, Dy. Clerk. 1902-388556-6. Send patent to Fielder B. Chew, Washington, D. C. Filed Mch. 5, 1902.

56 No. 21279.

Land Office at Natchitoches, La.

Sept. 18th, 1901.

It is hereby certified that, in pursuance of law, Samuel E. Bryers, residing at Hineston P. O., in Rapides Ph., State of Louisiana, on this day purchased of the register of this office the N. 1/2 of N. E. 1/4 of Section No. 34, in Township No. 3 N., of Range No. 5 W., of the La. principal Meridian, Louisiana, containing 75.65 acres, at the rate of two dollars and fifty cents per acre, amounting to 189 dollars and 13 cents, for which the said Samuel E. Bryers has made payment in full as required by law.

Now, therefore, be it known, that, on presentation of this certificate to the Commissioner of the General Land Office, the said Samuel E. Bryers, shall be entitled to receive a patent for the lot above described.

J. ERNEST BREDA, Register.

Under Sec. 2301, R. S. Orig. Hd. 8252. D. M. L.

Indorsed: No. 21279. Cash entry, Land Office at Natchitoches, La. Patent to Fielder B. Chew, city, Apr. 5/02, 1902.

38856. Sec. 34, Town. 3 N., Range 5 W., La. Mer. Orig. Hld. 8252. Proof, etc., sent to Agt. Irwin, 11/11/03. Div. "C," List No. 11. Approved March 4, 1902, by O. N. Burke, Ex-Clerk, Division "C." Patented April 1, 1902. Recorded Vol. 127, page 267. 4/144. Dec. 30/1901, appearance of Fielder B. Chew, for elt. March 15/02 to atty.

57 Special Agents must retain a press copy of this report.

### Report of Fraudulent Claim or Entry.

This form must be used only in cases found or believed to be fraudulent or abandoned. Cases found to be lawfully made and maintained need not be reported on this form, but must be reported by letter containing brief statements of the facts.

In cases of homestead claims the blanks must be filled up strictly as here indicated. In other cases the form will be followed as closely as applicable, and in all cases reported such other points will be covered as the nature of the case may require.

In every instance when names of parties or witnesses are given, the postoffice address and residence must also be stated.

1. Name of claimant:

Samuel E. Bryers.

2. Description of land covered by filing or entry:

N. 1/2 N. E. 1/4, Sec. 24, Tp. 3 N., R. 5 W., Louisiana Meridian.

3. Date of examination:

May 24, 1906.

4. Character of land (timber, mineral, agricultural, or desert). If timber land, whether, if cleared, it would be unfit for agricultural; if for timber culture entry, whether section is naturally void of timber; if desert, whether grass or other agricultural crop could be produced without artificial irrigation; if mineral, character and evidence thereof:

Pine timbered land, which, if cleared, would be adapted to agriculture.

5. Date and number of filing or entry; if proof has been made, date of proof, and number of final certificate:

H. E. 8252. January 31, 1900. C. E. 21279, patented April 1, 1902.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant, and nature of claim:

The land is unoccupied, but is claimed by the Wright-Blodgett Co., of Saginaw City, Mich., by virtue of a deed from entryman.

7. Is the land inclosed for stock ranging or other purposes, and, if so, by whom? Give extent of such inclosure, and describe the land inclosed:

The land is not inclosed.

8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold:

The timber has not been cut.

58 9. Character, extent and value of improvements in detail, when and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were constructed, and cost of same. If a timber-culture entry, amount and date of breaking, planting, etc.:

There are no improvements of any character on the tract, but evidence of a house about 12 feet square having been burned thereon, and about half acre of land which has been broken.

10. Residence of claimant: When actually established on the land, and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land, or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to make the entry, and is known in the neighborhood of the claim:

Claimant lives now in Tp. 2 N., R. 4 W. He never established a residence on the tract in question, but during the life of his entry lived at the house of Joseph White in Sec. 24, Tp. 2 N., R. 5 W., about five miles distant from said entry. He has a wife and child who live with him. He was legally qualified to make the entry.

11. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant: Whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferee, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record; whether the entry has been abandoned or relinquished, and if so, when and for whose benefit:

There is no evidence that the original entry was made in the interest of any other party, but the commutation proof was made at the instance of James M. Boyd, U. S., Commissioner, before whom proof was made, and the money necessary to make said proof was not furnished by entryman, nor did he even see it. The records of Vernon Ph., La., show the record of a warranty deed from claimant to the Wright-Blodgett Co., of Saginaw City, Mich., conveying the claim in question, dated Sept. 28, 1901. The consideration named in the deed is \$90.00. The claimant contracted to sell the claim before he made proof on same. See affidavit attached.

12. Names and postoffice address of witnesses, their reliability; abstract of their testimony.

Geo. S. Wells lives on adjoining land, P. O. Leander, La. He is reliable, although he refused to give his affidavit. He says he will, if called on by competent tribunal, testify to the facts set forth in this report.

13. Have you secured affidavits of witnesses? If so, submit them or copies thereof:

See affidavit of F. M. Ingalls.

14. Have you requested claimant to make a statement? If so, and he does not intend to offer proof, did you try to obtain a relinquishment or an affidavit to that effect (without coercion)?

Affidavit of claimant herewith.



59            15. Was the fraud willful?  
Yes.

16. Have any legal proceedings been instituted?  
Entryman and his witnesses, Leon Smith and E. Z. Boyd,  
were indicted for perjury Nov. 18, 1903, at Shreveport, La.

17. Action recommended by agent:  
That a suit be instituted to set aside and cancel the patent.  
Dated at New Orleans, La., June 20, 1906.

CLAYTON G. COLEMAN,  
Special Agent, General Land Office.

Note—If the space allotted under any of the above headings is not sufficient to state the particulars required, state the same on a separate sheet referring to the number of the questions, and attach the same to the report.

Indorsed: U. S. Land Office. Received Jun 25, 1906.  
103519. Report of Clayton G. Coleman, Special Agent, G. L.  
O. New Orleans, La. June 20, 1906. In the case of homestead  
entry, No. 8252. C. E. 21279. Pat. L. O. Natchitoches, La.  
Names, Samuel E. Bryers. Tract N 1/2 N. E. 1/4, Sec. 34,  
Tp. 3 N., R. 5 W. No. of report, —. Recommendation:  
Suit to cancel patent. Date of office letter directing the in-  
vestigation, None. 190. New Orleans, La., June 22, 1906.  
Respectfully forwarded. Appd. Boyd & Wasey were agents  
for the Wright-Blodgett Co., as shown by other reports. J.  
W. Williams, Chief Field Div.

\* \* \* \* \*

61 United States Court, Fifth Circuit, Western District of Louisiana.

United States Government

vs.

No. 380

Samuel C. Bryers and the Wright-Blodgett Co., Ltd.

No. — in Equity.

Testimony taken out of Court by order of court before the Hon. Walter Jackson, Clerk of said Court, and special examiner under appointment of the Hon. Alex. Boardman, Judge, of date May 30th, 1907, at Lake Charles, La., on the — day of January, 1908.

E. P. Mills, Asst. U. S. Atty., for Complainant.

Messrs. Mitchell & Young and Hall & Monroe for Defendants.

62 Stenographers' Oath.

I, Fred W. Pulliam, hereby solemnly swear that I will faithfully and correctly take the testimony of all witnesses in the case of the United States vs. Samuel C. Bryers and the Wright-Blodgett Co., Ltd., taken at Lake Charles, La., this — day of January, 1908, and that I will file all documents offered in evidence and correctly transcribe the testimony of the witnesses and forward the same to the Clerk of the United States Court at Shreveport, La., within twenty days from the date hereof.

.....  
Stenographer.

Inasmuch as the witnesses in these cases have come to testify, some of them from a great distance, and desire to return to their homes as soon as possible, it is agreed upon that they sign the stenographer's notes. The further signature upon their part is waived.

63 S. C. BYERS, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. S. C. Bryers.

Q. What is your first name?

A. Sam.

Q. Where do you live?

A. I live at Leander Postoffice.

Q. In what parish?

A. I am living now in Rapides, not far from Leander Post-Office.

Q. How old are you?

A. How old?

Q. Yes, sir.

A. I was thirty on the 17th of this month.

Q. What is your occupation?

A. Farming.

Q. Did you ever make homestead entry of any land in Vernon Parish?

A. Yes, sir.

Q. How many entries [entries]?

A. Just one.

Q. When was it that you made that entry?

A. I couldn't tell you just the time. It was seven years ago about the last of this month if I am not mistaken. Is that right?

Q. I couldn't tell you. Do you know the description of the land by the numbers?

A. No, sir. I couldn't tell you the numbers.

Q. How many acres did you enter?

A. Seventy—a little better than 76.

Q. Can you describe the land you entered by telling who lived near it?

A. Yes, sir.

Q. Go ahead.

A. Mr. Lowe lived there right close to my homestead, adjoining.

Q. Which side?

64 A. North side—no, it is the south side.

Q. Do you know who adjoins it on the east?

A. On the east; no, sir, I couldn't tell you.

Q. Do you know who adjoins it on the west?

A. No, sir.

Q. Who lived to the north of you?

A. George Wells.

Q. When you made that entry did you put any improvements on this land?

A. Yes, sir.

Q. What did they consist of?

A. A plank house twelve by twelve, and I had a little crib on it and about an acre and a half I reckon, of course I did not measure that, but that was about what it was.

Q. Now this house that you built, did it have doors and windows?

A. No, sir.

Q. Have any chimney?

A. No, sir.

Q. Had a roof on it?

A. Yes, sir.

Q. Did you ever commute this entry?

A. Yes, sir.

Q. How long after the entry?

(Objected to by Mr. Monroe on the ground that the record is the best record.)

A. I cannot recollect, I think about twenty months.

Q. Before whom did you make this?

A. Jim Boyd.

Q. Did you make your commutation proof of your own free will, or was it suggested to you?

A. No, sir; I did not.

Q. How did you come to make it?

A. How do you mean?

Q. Who had you to make your commutation proof at that time?

(Objected to by Mr. Monroe as leading and irrelevant for the reason that it does not tend to prove or disprove any allegation set at issue in the proceedings in this case.)

65

A. Jim Boyd asked me if I did not want to commute.

Q. How much money did you have to pay?

(Objected to by Mr. Monroe as irrelevant for the reason that it does not tend to prove or disprove facts or allegations set at issue in the pleadings in this case.)

Q. How much money did you have to pay the land office?

A. It was two dollars and a half an acre—that is double minimum.

Q. Where did you get the money?

(Objected to by Mr. Monroe as absolutely irrelevant. The only facts set at issue by the pleadings in this case is the question whether or not Bryers actually lived upon that homestead and this investigation is therefore irrelevant.)

A. They furnished it.

Q. Who do you mean by they?

Counsel for defendant at this point requested the examiner to charge this witness that he was not in this case to testify to anything which he knew by hearsay evidence. That he was to confine his testimony to such facts as he knew by his own personal knowledge.)

(Counsel for plaintiff objects to any instruction being given by the examiner for the reason that the examiner has no authority under his appointment to pass upon the competency or incompetency of testimony and that an instruction will be equivalent to a ruling upon the admissability of evidence and the remedy of defendant in the premises is by proper objection noted in the testimony.)

(By Mr. Jackson, Special Examiner:

“For the reason stated by counsel for plaintiff, the examiner declines to so instruct the witness.)

A. Who, Mr. Wasey?

Q. What Mr. Wasey?

A. Nat Wasey.

Q. How much money did he give you?

A. How much?

(By Mr. Monroe:

It is understood that the same objection apply without repetition to this entire line of testimony.)

Q. Do you remember how much money he gave you?

A. For the land?

Q. No, to make you commutation?

A. Now I could not tell you.

Q. Were any promises made by you to Mr. Wasey  
66 in consideration for this money?

(By Mr. Monroe:

Same objection as before.)

A. No, I do not believe there was any.

Q. What was the language between you and Mr. Wasey?

(Objected to by Mr. Monroe as leading and the same objection as noted above.)

A. Why, I do not know.

Q. Didn't you and Mr. Wasey have any language about this money?

(Same objection made by Mr. Monroe.)

A. Now, I do not believe we did.

Q. He just came and handed you the money without any statement at all?

A. No, I didn't see no money.

Q. What did Mr. Wasey say to you in regard to the money?

A. He never said anything to me.

Q. Do you own that land at present?

A. Own it at present? Yes, sir—no.

Q. What have you done with the land? Sold it to Jim Boyd?

A. Yes, sir; he was buying. I sold it to Nat Wasey.

Q. When did you sell it to Wasey—how long after your commutation?

Mr. Monroe objected to this on account that the best evidence is the deed and for the other objections noted above.

A. Why, I never sold it until I got my final receipt.

Q. You sold it then as soon as you got your final receipt?

A. Yes, sir.

(Objected to by Mr. Monroe as leading, he also offering the same objection as noted above.)

Q. How much did Mr. Wasey pay you for the land?

(Objected to by Mr. Monroe as leading and for the same reasons as noted above.)

A. I do not know how much it was. I got ninety some odd dollars. I do not know just how much.

Q. Where were you living at the time you made this entry?

A. I was living at—I was working at Mike Smiths, and I would stay on my homestead—I would go up there and stay on it some, I couldn't stay on it all the time.

Q. How long did you work at Mike Smiths?

67 A. A little over a year.

Q. Did you work there during the whole life of your entry from the time you entered till the time you commuted?

A. There and at Joe Whites.

Q. How far did Mr. Smith live from your land?

A. About four miles.

Q. How far was Joe Whites from your land?

A. Five miles.

Q. How was this house of yours furnished at the time you made your entry?

A. Why, I just taken my things up there.

Q. What things did you take?

A. My quilts to sleep on and stay on the land.

Q. What other furniture, if any, was in the house except your quilts?

A. I never had anything else.

Q. What cooking arrangements did you have?

A. None, I carried my grub with me.

Q. How often during the twenty months that you say passed between the time of your entry and the time of your commutation proof did you stay all night on that land?

A. I reckon I made an average of staying on it about one night out of the month.

Cross-Examination.

By Mr. Monroe:

Q. You have been indicted, haven't you?

A. Indicted?

Q. Yes, sir; you have been indicted for perjury?

A. Yes, sir.

Q. By the United States government?

A. Yes, sir.

Q. The indictment is now pending, is it not?

A. I do not know.

Q. You have not been tried yet?

A. No, sir.

68 Q. Have you had any conversation with anyone relative to this indictment?

A. No, sir.

Q. Do you know Mr. Coleman?

A. Yes, sir.

Q. Had you spoken with him about it?

A. Yes, sir.

Q. Talked to him a plenty, haven't you?

A. Why, no.

Q. Talked to him some though?

A. Yes, sir.

Q. You talked to him about coming up here to testify in this case?

A. No, I didn't know anything about having to come.

Q. Didn't you make an affidavit to Mr. Coleman?

A. Yes, sir.

Q. He told you it would be all right if you would make the affidavit?

A. Yes, sir.

Q. He told you you needn't worry about that indictment for perjury if you made that affidavit?

A. He didn't say anything about it.

Q. He told you that would be all right?

A. Yes, sir.

Q. And told you if you made that affidavit you needn't be worried any more?



A. Yes, sir.

Q. That was the reason you made that affidavit?

A. Yes, sir.

Q. That is the reason you are here testifying now?

A. Yes, sir.

Q. You say you built a house up there?

A. Yes, sir.

Q. How long did it take you?

Q. [A.] Why, I was up there a week building  
69 on it.

Q. What is it made out of?

A. Lumber.

Q. Where did you get the lumber?

A. From Mr. Smith.

Q. The preacher?

A. Yes, sir.

Q. Did he help you build the house?

A. No, his son did.

Q. You cultivated the land out there, didn't you?

A. Yes, sir; I made two crops on the stand.

Q. What of?

A. Corn and peas.

Q. Harvested them both?

A. Yes, sir.

Q. You used to go up there and sleep in that house?

A. Yes, sir.

Q. How often?

A. About once a month. I could not stay on it all the time of course. I was a single fellow and a single fellow has got nobody to stay with him and he don't like to stay alone.

Q. You are working for the Rev. Mike?

A. Yes, sir.

Q. And when you got through work come back and stay on your place?

A. When I stayed on the homestead I did.

Q. You stayed there as much as any place else?

A. Well, no; because I work, and when I worked out I could not go back. It was too far. I stayed there all I could, though.

Q. You were not able to make a living by working on that homestead?

A. No, sir; the land was too poor.

Q. You went back there all that was necessary to attend to your crop?

A. Yes, sir.

Q. Kept you at work right straight along?

70 A. Yes, sir.

Q. Didn't have any other home except that?

A. Well, no. I didn't have any other home, of course.

Q. You considered it your home?

A. Yes, sir.

Q. When you were working out you were living up there at your house?

A. Yes, sir; I didn't have any other home only when I moved.

Q. You would live with the Rev. Mike for a while and then go back to your homestead?

A. Yes, sir.

Q. Then you would work for White for a while and then come back home?

A. Yes, sir.

Q. When you would get through work at the Rev. Mike's you would come back to your homestead and live on it?

A. Yes, sir; while I was on my homestead I worked, too.

Q. Who were the witnesses of your proof?

A. Well now, that is going to be pretty bad. I think Lige Boyd and Leon Smith.

Q. Is Rev. Mike on your proof too?

A. No, he is not on the proof.

(By Mr. Monroe:

The following line of cross-examination subject to the objections heretofore made on direct examination and is made only in case these objections should be overruled:)

Q. Nat Wasey never gave you any money in your hand?

A. No, sir.

Q. The money you got was when the land was bought from you?

A. I never got no money in my hand at all only what was paid for my land.

Q. How do you know anything about what was paid for your land, did somebody tell you about it?

A. What was paid?

Q. Yes. You made the proof at two and a half an acre?

71           A. Yes. Why I do not know what it was. I didn't know how much. Nobody didn't tell me.

          Q. Were you working for Michael Smith at the time?

A. Yes, sir.

Q. You were making money, wasn't you?

A. Yes, sir.

Q. How much money?

A. I do not know now. I believe \$1 a day he was giving me.

Q. And your board?

A. Yes, sir.

Q. Had you saved up any money?

A. No, I had not saved up none.

Q. When did you make your original entry on that land?

A. When did I?

Q. Yes.

A. It was seven years ago.

Q. That was the original entry proved up. The first one. The original.

A. Why, I proved up I believe along in the—I won't say for certain, along in the fall sometime. I won't say just what time.

Q. Yes, you proved up Sept. 19, 1901. When was your original entry?

A. When I made I made my first homestead?

A. [Q.] Yes.

A. About twenty months before that. Yes, somewhere about that time, I forgot. Somewhere about that.

Q. How did you happen to make your original entry? You wanted the land?

A. Yes, sir.

Q. You went on there of your own free will to make that entry?

A. Yes, sir.

Q. Now what I want to get at is this: you said something about Mr. Wasey paying some money for you. How do you know he ever did?

A. I really do not know it.

72           Q. You do not know anything except what was told you?

A. Yes, sir.

(Mr. Monroe objected to this testimony on the ground that it is hearsay.)

### Redirect Examination.

By Mr. Mills:

Q. What testimony you have given here this morning is the truth about this matter, is it not, as near as you can remember?

A. Now of course there is things I have forgot. I couldn't tell you. Of course I will forget things.

Q. Well, as near as you can remember?

A. Well, I reckon so as near as I could give you. I do not know.

Q. You say you made this entry with the idea of having a home there for yourself?

A. Yes, I did. I really did.

Q. When did you change your mind and decide to sell?

(Objected to by Mr. Monroe on the ground that it is irrelevant and not tending to prove or disprove any facts or allegations set forth in the pleadings in this case.)

A. I have done only—there ain't use in getting tangled up. Of course I would rather not.

Q. But you have got to answer, there is no use fiddling or you will get into contempt of Court. What made you change your mind?

A. Why, I couldn't tell you.

Q. What facts, if any, happened to make you change your mind?

(By Mr. Monroe:

The same objection to this entire line of testimony.)

A. Well, I do not know what you mean by that.

Q. Yes, you do. If you enter a piece of land with the idea of making it a home and then turn around in twenty months and sell it you must have changed your mind?

(By Mr. Monroe:

Same objection as above\* and in addition that this question is extremely leading.)

A. Well, I did change my mind.

Q. What led you to do so?

73 A. Well, I did not think I could make a living on it.

Q. What was the nature of this land?

A. It was pine land.

Q. Pine timber land?

A. Pine timber land, it was poor—too poor land.

Q. How long have you lived in the vicinity of this land?

A. I was raised right there near it.

Q. Did you go upon this land and examine it before you made the entry?

A. No, sir.

Q. But you knew what it was?

A. No, sir; I come back and looked at it after I made my entry. I never had been on it.

Q. Was this the same kind of land as that in the neighborhood?

A. Well, about the same kind of land.

his  
(Signed) S. C. X BRYERS.  
mark

I attest to this signature.

FRED W. PULLIAM, Stenographer.

74 F. M. INGALLS, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Mills:

Q. What is your age?

A. 40 years.

Q. What is your full name?

A. Francis Marion Ingalls.

Q. What is your occupation?

A. Why at this time I am night watchman at Leesville.

Q. In what parish is Leesville?

A. In Vernon.

Q. Do you know the location of the N. 1/2 of the N. E. 1/4 of Sec. 34, Twp. 3 North of Range 5 West, La. Mer.?

A. I do.

Q. Did you ever reside in the vicinity of that land?

A. Yes, sir.

Q. In the year 1900 did you reside there?

A. Yes, sir; that year I resided about two or three miles from that land.

Q. Where did you reside in 1901.

A. Within about half a mile of the land.

Q. When did you change your residence and move closer to the land?

A. That was—I moved Dec. 12, 1909, to the best of my recollection.

Q. In the years 1900 and 1901 who lived to the south of this land—whose property adjoined it on the south?

A. I do not remember it now, I could not call it to my knowledge now.

Q. During the years 1900 and 1901 was anyone living on this land?

A. Why I think Bryers had a homestead on that land, and I do not remember though, in what year he made this improvement.

Q. The improvement consists of what?

A. To the best of my knowledge now, his improvement consists of the house and a little field cleared; possibly there might have been more, but that is all I can call to memory now.

Q. What kind of a house was it?

75 A. I remember of him putting up a box house—a lumber house on that land, but whether there was any house before that or not I don't know. He put that house there, it seems to me he must have had some kind of a building besides that, I cannot remember, but he put up the house on that land.

Q. About when?

A. He must have—I couldn't say positively, but I think it was in the first part of the year 1900. I am not positive.

Q. Now was this house furnished in any way?

A. Well, sir; the best that I remember Bryers would make occasional visits to the land and would stay on the land, I suppose a few days, and I think he had something there to the best I remember now.

Q. Were you ever in the house?

A. I have no recollection now of ever being in the house. No, sir; I have no recollection.

Q. How often would you be on this land?

A. About once a month I suppose, something like that.

Q. How much of the land was fenced or ploughed or in cultivation?

A. The best of my recollection there was something like one or two acres, I am not positive, there was something like that. There was a little field in cultivation and I saw him when he was breaking the land, but I am not positive about the amount now. Of course at that time I knew, but now I could not say.

Q. Do you know whether any crops were made there or not?

A. Well I believe that he made a crop there, but I could not say at this time what it was—no, sir; I could not. I remember his planting a crop and it appears that it was corn, but I could not say positively.

Q. Do you know where Bryers lived, or worked during the years 1900 and 1901?

A. Well, Mr. Bryers was a single man at that time, and I think lived, to the best of my remembrance with Mr. Smith.

Q. How far was that from this land?

A. Why it must be about four miles. It would  
76 be about four or five miles. I do not think over four miles.

Q. Do you know how long he worked for Mr. Smith?

A. I do not remember.

Q. Do you know whether it was 1901?

A. No, sir; I do not remember the date, but I remember of his working for Mr. Smith during that period of time. He would bring Mr. Smith's team and carry the lumber from Mr. Smith's mill to his homestead; also that he would employ or have some of Mr. Smith's hands with him. That is what I remember though. He was working for Mr. Smith during the life of the homestead.

#### Cross-Examination.

By Mr. Monroe:

Q. Your recollection of things is that you would go there across this land casually about once every month and that

sometimes you would see Mr. Bryers living on there and sometimes you would not?

A. Yes, sir.

(Signed) F. M. INGALLS.

Indorsed: No. 380. United States District Court for the Western District of Louisiana. United States vs. S. E. Bryers et al. Testimony taken in Jany., 1908, in Lake Charles, La.

77 JOHN JOHNSON, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. John Johnson.

Q. Where do you live?

A. In Vernon Parish, Fifth Ward, near Craven P. O.

Q. How far is that from Leesville?

A. About 25 miles.

Q. How long have you lived there?

A. I think I have been there sixteen years last fall.

Q. About how old are you?

A. I will be thirty-five years old Monday next.

Q. Did you ever know a man named Nat Wasey?

A. Yes, sir; I know him, or did.

Q. When did he first come into that country?

A. I could not tell you how long it has been.

Q. About how long?

A. He was there along about seven years ago—he was there, I am pretty sure, I could not say positively, but that is my recollection.

Q. Did you ever have any dealings with him?

A. I sold him a piece of land while he was there.

Q. What kind of land?

(Objected to by Mr. Monroe as irrelevant.)

Q. What kind of land was this you sold him?

A. It was timber land.



Q. What kind of timber?

A. Part of it was good heavy open and part of it was along a little creek—a swamp with a creek on one edge.

Q. Did Mr. Wasey make any statement to you as to for whom he was purchasing this land?

(Objected to by Mr. Monroe on the ground that it is hearsay or if it is to be construed as an admission by an agent it is beyond the scope of his authority.)

78 A. I think he told me he was buying for the Wright-Blodgett people.

Q. Do you just think that or are you sure?

A. Well, I would not be sure, but I think he told me he did.

Q. Do you remember to whom the deed was made?

(Objected to by Mr. Monroe on the ground that the deed is the best evidence.)

Q. Well, I would hate to say positively that I do know, but I returned my deed. I never had it recorded to Mr. Wasey and told him to make his deed and have recorded and I could not tell you whether it was to him or the Wright-Blodgett people. I could not positively say.

Q. Do you know of any other land that Mr. Wasey bought in that neighborhood?

Q. [A.] No, I could not said [say] that I know that he did buy any, but I was told that he bought some.

Q. Never mind what you heard about it.

Q. Have you ever been indicted?

A. Yes, sir; I reckon so.

Q. What have you been indicted for?

A. I was indicted for getting a row with an old gentleman at his place long years ago, but I was nothing but a boy like.

Q. On what charge?

A. For swearing and cursing and using obscene language near a residence.

Q. Were you ever arrested on any other charge?

A. No, sir.

(Dictated by Mr. Mills:)

It is agreed between counsel for both sides that the above

testimony of John Johnson is to be added to each one of the cases covered by this submission except, 385, the United States of America vs. Henry L. Hogan, et al., and in that agreement it is understood that the signature of this testimony is waived in all the cases except the present.

(Signed)                      his  
JOHN X JOHNSON.  
mark

I attest to this signature.

FRED W. PULLIAM, Stenographer.

79                      W. A. WINFREE, being duly sworn, testified as follows:

Direct Examination.

By Mr. Mills:

Q. What is your name?

A. William Alfred Winfree.

Q. How old are you?

A. Forty-four years according to the family record.

Q. What is your place of residence?

A. My postoffice is Hawthorne.

Q. How long have you lived there?

A. I have been there steady for between ten and twenty years. I was raised there on the old place below me. One year I lived in Lake Charles?

Q. What was your occupation in 1898?

A. I was at work in the sheriff's office in Vernon Parish at Leesville.

Q. What was your occupation in 1899?

A. I was still at work there in the sheriff's office.

Q. What was your occupation in 1900?

A. I went to work in the clerk's office sometime in the spring.

Q. In what capacity?

A. Deputy clerk.

Q. Who was clerk at that time?

A. J. J. Hicks—was elected in 1900.

Q. Where did you work in 1901?

A. In the clerk's office.

Q. Where did you work in 1902?

A. In the clerk's office—and part of 1903 is my recollection.

Q. Did you know Nat Wasey?

A. Yes, sir.

Q. When did you first see him?

A. I do not remember, but I think sometime in 1898, and on then for several years.

Q. Do you remember just when he left?

A. No, sir; I do not.

80 Q. During the time you were employed in the clerk's office how often would you see Nat Wasey in the office?

A. He had no regular time that I know of to visit Leesville. I would sometimes see him there once a week, and from then I would not see him for probably two months.

Q. What business would he have in the clerk's office?

A. He usually would bring deeds and file certificates and make affidavit before the clerk sometimes, and then would bring matters for the Wright-Blodgett Co., Ltd., and then he would instruct whatever instructions he wanted to give concerning them.

Q. What instructions would he give?

A. Sometimes one, sometimes another, is my recollection.

Q. By whom was the clerk's office paid for matters and papers filed by Mr. Wasey?

A. By the Wright-Blodgett people.

Q. To whom would the clerk's office send their bills for these papers?

A. My recollection is all the deeds that were ever filed there and recorded for the Wright-Blodgett people were sent to them at Lake Charles and they would return a check covering the fee bill.

Q. Do you remember how these checks were signed?

A. I do not. It was in payment for the deeds that were recorded for the Wright-Blodgett people. I think most of the time they were signed by Mr. Kelly or Mr. Dickens, probably all the time.

Q. Did Mr. Wasey ever make any statement to you as to who he was employed by?

(Objected to on the ground that it is hearsay and is as admission beyond the authority of the agent.)

A. As I stated a while ago, I do not remember the exact language that he used, but he told me he was representing the Wright-Blodgett people who had an office at Lake Charles here, which I think was the first statement that he ever told me, and then gave me his instructions.

81 It was understood that the same objection apply without repetition to this entire line of testimony.)

Q. During the time Nat Wasey was having the deeds filed and certificates and other papers filed in the clerk's office at Leesville did he ever give you any other instructions in regard to these papers about sending them to any other party than the Wright-Blodgett Company?

A. I do not think he did—that is matters that belong to the Wright-Blodgett people.

Q. Did he ever file other papers?

A. I do not remember, I presume he did. I presume sometime other people would send deeds by Mr. Wasey.

#### Cross-Examination.

By Mr. Monroe:

Q. My understanding of your testimony is that you are not prepared to swear that any of these conversations or transactions with Mr. Wasey took place prior to the year 1901?

A. No, sir; I do not remember what time Mr. Wasey ever told me what he was doing.

Q. What time was it he had that conversation with you and told you about his employment?

A. As well as I remember it was about the first time I saw him after I had seen him in Lake Charles several years before. When I saw him there I asked him what he was doing there.

Q. As I understood your testimony you are not prepared to swear that any payment was ever made for any recordation of anything else by a check signed by the Wright-Blodgett Company?

A. I do not remember. The checks would be returned signed, that is, the check covering the fee bill. The checks were good and any bill that was sent to the Wright Blodgett Company was paid that I have any knowledge of. I do not think Mr. Wasey ever paid a bill though I do not recollect.

Q. Mr. Wasey recorded deeds for other people beside Wright-Blodgett?

82           A. I would not say positively. He might have, I really presume he did, but I do not recollect a single one that he ever carried there.

Q. I believe I asked you a while ago and you told me that you had never asked Mr. Wasey who he was employed by?

A. I do not know as I ever came out and asked him the whole particulars; when I first saw him I asked him what he was doing there, but I don't know in what kind of language or anything else, but I took it for granted that he was doing what he said and by his bringing these papers that that was what he was doing. I did not know anything about what he was doing or did not care further than I was just helling with him as a fellow will do when you have not met a man for a year or two.

Q. You say you do not remember just what Mr. Wasey told you then and do not remember just what he did tell you. Are you sure it was Mr. Wasey, or maybe it was somebody else?

A. No, sir; I remember asking Nat Wasey when he began to come up there what he was doing. I was not concerned and had no interest in what he was doing. I just asked him and a person would naturally have to draw upon his imagination in order to remember all about it.

(Signed)           W. A. WINFREE.

(The same agreement was made between the attorneys on both sides as with the testimony of John Johnson with reference to all but the Hicks case.)

83           JAMES A. HEARD, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Mills:

Q. What is your full name?

A. James A. Heard.

Q. How old are you?

A. Thirty-seven.

Q. Where do you live?

A. At Slabtown, Vernon Parish.

Q. How long have you lived there?

A. Since 1891.

Q. What is your occupation?

A. Farming.

Q. Did you live there in 1899, 1900 and 1901?

A. Yes, sir.

Q. Did you know at that time a man named Nat Wascy?

A. I did.

Q. Where did he live?

A. Brushy Creek.

Q. How far from you?

A. Eight miles.

Q. What was his occupation at that time?

(Counsel for defendant requests the examiner to charge this witness that in this testimony that he is to testify not as to anything he may have heard or been told, but exclusively as to things which have come within his own personal knowledge.)

Counsel for plaintiff objects to any instructions being given by the examiner for the reason that under the order of reference the examiner has no authority to pass upon a competency on [or] incompetency of evidence and that such an instruction would be equivalent to passing upon the competency or incompetency of evidence.

By Mr. Jackson, Special Examiner:

The request is refused for the reason given by the counsel for the government.

Q. What was his occupation in 1899, 1900 and 1901?

A. He was buying timber.

Q. How do you know that?

A. By seeing what he was doing.

84 Q. You know that then of your own personal knowledge?

A. I do.

Q. Saw him buying for himself or someone else?

A. For the Wright-Blodgett Company.

Q. How do you know that?

A. The deed was transferred.

Q. Do you know that of your own personal knowledge?

A. I do.

Mr. Monroe objects to the last answer on the grounds that it is not the best evidence.)

(Signed) JAMES A. HEARD.

(It is agreed that the above testimony of the witness in regard to Nat Wasey is to be incorporated in the transcript of the testimony of all the cases except those of William Hester and Krause & Mangham.)

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85 In United States Circuit Court, 5th Circuit, Western District of Louisiana, at Shreveport.

United States

vs.

No. 380.

Samuel E. Bryers and The Wright-Blodgett Company, Ltd.

J. B. Monroe, A. S. Mitchell, Counsel for Defendant.

M. C. Elstner, U. S. Atty., E. P. Mills, Assistant, Counsel for Gov.

\* \* \* \* \*

87 In U. S. Circuit Court, Fifth Circuit, Western District of La., at Shreveport.

United States

vs.

Case No. 380.

Sam'l E. Bryers and The Wright-Blodgett Company, Ltd.

It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken.

Counsel for complainant offered in evidence certified copy of deed from Samuel E. Bryers to the Wright-Blodgett Company, Ltd., of date Sept. 28, 1901, and asks that same be filed and marked "Exhibit A" in case No. 380.

Counsel for defendant stated he would make no objection to this copy for any formal reason.

88 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

### TESTIMONY OF A. G. WINFREE.

Mr. A. G. Winfree, a witness in behalf of complainant, being duly sworn, testified as follows:

#### Direct Examination.

By Mr. Elstner:

1. Did you know Nat Wazey?

I did.

2. State whether or not in connection with the Wright-Blodgett Co., Ltd., he exercised a general supervision over the purchase of lands in their interest.

I do not know of my own knowledge. I can state that I recognized Mr. Wazey as such. It was so understood throughout the community and I so understood that he represented the Wright-Blodgett Co., Ltd.

3. From what circumstances that came under your personal observation were you led to the conclusion that Nat Wazey represented The Wright-Blodgett Co. in the investigation of lands and in securing their purchase? State your personal observations, conduct of Mr. Wazey, what he did and all you know about it.



Well, at the time Mr. Wazey was buying lands in Vernon Parish I was running a livery stable and at the times when he would come to Leesville he would stop with me; consequently we became well acquainted and I knew at the time  
 89 that he was purchasing lands throughout the parish by various conversations and transactions I had heard of, but still I don't know that I was ever a witness to any transaction he made for these people. It was only current talk throughout the community.

(Counsel for defendant objects to above testimony on the ground that it is mere hearsay.)

4. State whether or not Mr. Wazey informed you of the purchase of any lands that he had made for the Wright-Blodgett Co.?

I cannot answer that question. I do not really know of any particular instance. It is too far back to remember.

5. Do you know whether or not from any statement he ever made to you that he represented himself as the agent of Wright-Blodgett Co. in the purchase of lands?

No, sir; I really don't know that he did.

6. Did you ever see him at Leesville acting in the capacity of attesting witness in any of these purchases that appear on record in this case?

I did not. I was not in position to know those facts.

7. Do you know where Mr. Nat Wazey lived?

I am of the opinion that he lived in the southeast portion of the parish.

8. How far from Leesville?

About 25 or 35 miles. I was never at his place and really do not know that he had a place; only I know that he spoke of his family down there.

9. About what is the distance from Leesville to Lake Charles?

About 70 miles.

10. Did Mr. Wazey, or did he not, have any business occupation in the Town of Leesville?

None that I know of.

11. Did he have any mercantile establishment or office in the Town of Leesville?

Not to my knowledge.

12. How often would you see Mr. Nat Wazey  
90 in the Town of Leesville?

I can't remember, but he was there frequently.  
Possibly weekly; I don't know for certain.

13. You did not see him there often enough to suggest that  
he was engaged in any permanent or daily business in the Town  
of Leesville?

No, sir. If he had any business connections in the Town  
of Leesville I was not aware of it and am not aware of it at  
the present time.

14. You live in Leesville?

All of my life.

91 This testimony is offered as applicable to all of the  
cases of the U. S. against homestead entrymen that  
sold to the Wright-Blodgett Co., Ltd., in the cases now pend-  
ing against them in the U. S. Circuit Court and submitted to  
the master for the purpose of taking testimony at this time. It  
is understood that a duplicate transcript of this testimony will  
be written up for insertion in each of the cases. This particu-  
lar evidence shall be incorporated in each of the several cases  
where it is offered.

### TESTIMONY OF A. N. MAYO.

A. N. Mayo, a witness in behalf of complainant, being duly  
sworn, testified as follows:

#### Direct Examination.

By Mr. Elstner:

1. Mr. Mayo, did you know Nat Wazey?

I did.

2. Do you know whether he is living or dead?

I heard some year or two ago that he was dead.

3. Has there ever been a succession of Nat Wazey open in  
the Parish of Calcasieu?

I believe not, for I have a record of all probate matters in  
my office and I cannot recall now of having seen such probate  
proceedings.

4. Do you know that several years ago Mr. Nat Wazey left

the Parish of Calcasieu and was supposed to have been taken to a sanitorium?

It was current report at Lake Charles.

5. How long had you known Nat Wazey prior to his leaving Lake Charles?

Must have been 10 to 14 years.

6. During the latter part of his residence in Calcasieu Parish what business was he engaged in?

(Counsel for defendant objected to this witness stating anything from hearsay, but confining himself to his own knowledge.)

92 I think I can say it was real estate business. It was about the only thing I knew of his doing.

7. Do you know anything of his connection with the Wright-Blodgett Co. in the purchase of land without reference to any special tract, but in a general way?

It was currently, or generally, stated and I have understood that he would purchase timber from the Wright-Blodgett Co.; make purchases for them of lands.

(For the purpose of emphasis counsel for defendant objects to this testimony on the ground that it was hearsay.)

8. Have you ever had any conversation with Mr. Nat Wazey himself with reference to his engagements, or employments, or connections with the Wright-Blodgett Co.?

No, sir.

9. You kept a record of the lands in Calcasieu Parish, did you not, in your office?

I have abstract of title records. I have them now.

10. Do you know of any investigations made by Mr. Nat Wazey of the records of lands in Calcasieu Parish for the purpose of making purchases for the Wright-Blodgett Co.?

No, sir.

11. Now, Mr. Mayo, you have stated that it was generally understood that Mr. Nat Wazey was acting in the interest of the Wright-Blodgett Co. in the acquisition of timber lands. Now state just what circumstances led you to make that statement.

(Objected to by counsel for defendant for emphasis as being mere hearsay.)

Not being able to recall any transaction in which any purchase of land as made by Mr. Wazey was for the specific account of Wright-Blodgett Co., but only from the general statement that purchasers made from time to time either for their own account or Wright-Blodgett Company, I have no way of linking any particular transaction as being for the Wright-Blodgett Co. I so often prove up deeds, titles to real estate. Mr. Wazey was in and out of my office from time to time, but what transactions might have been for the Wright-Blodgett Co. I cannot say.

12. Do you know where Mr. Nat Wazey lived several years prior to his leaving Lake Charles?

He lived in Lake Charles on our principal street.

13. Was Nat Wazey a married man?

Yes, sir; twice married.

14. Prior to his death, or prior to his leaving Lake Charles, how long had he been a citizen and resident of Lake Charles?

I don't remember the year he moved away from Lake Charles. He came to Lake Charles about 1886, I should say, and left there in the latter part of the '90's, as well as I can recall.

15. After leaving there in the latter part of the '90's did he again return to Lake Charles and make his residence there?

I think not, sir.

16. Do you know where he lived after leaving Lake Charles up to the time of his leaving Calcasieu Parish?

I do not know.

17. Do you know anything of his having a residence in the Parish of Vernon?

Only current report.

18. Did his family leave Lake Charles at the time you state in the latter part of the '90's at the time he himself left there?

I do not know, sir.

#### Cross-Examination.

By Mr. Monroe:

1. You say you know that Nat Wazey left a half-brother living in Miss.?

I don't know but what this half-brother was in Lake Charles at the time Mr. Wazey left there, but he is probably now in Mississippi.

2. What is his name?

A. Frank B. Clingo.

3. Did Nat Wazey have any other brothers or sisters by name of Clingo?

I never heard of them.

94 This testimony is offered as applicable to all of the cases of the U. S. against homestead entrymen that sold to the Wright-Blodgett Co., Ltd., in the cases now pending against them in the U. S. Circuit Court and submitted to the Master for the purpose of taking testimony at this time. It is understood that a duplicate transcript of this testimony will be written up for insertion in each of the cases. This particular evidence shall be incorporated in each of the several cases where it is offered.

#### TESTIMONY OF BEN M. FOSTER.

Mr. Ben M. Foster, a witness in behalf of complainant, being duly sworn, testified as follows:

##### Direct Examination.

By Mr. Mills:

1. Where do you live?

Lake Charles.

2. How long have you lived there?

All my life.

3. What business are you in?

Real estate.

4. How long have you been in that business?

Since 1898.

5. By whom were you employed in 1898?

I was in business with my father from 1898 to 1901.

6. Did you change your employment at that time and go in with someone else?

About the fall of 1901 I went in with Wright-Blodgett Company.

7. Do you remember the exact date?

No; it was in the fall. I don't remember the exact date.

8. At what place were you employed?

At Lake Charles.

9. Did they maintain an office there?

95 They did.

10. In what capacity were you employed by them?

Looking after the office generally and keeping books.

11. What was the extent of your authority; the nature of your work?

I was under Mr. Kelly.

12. When you say "looking after the office generally" you mean attending to the business of the office?

Yes, sir; and making my reports to Mr. Kelly.

13. How large was the office force of the Wright-Blodgett Co. at that time?

Just one.

14. You were the only man in the office?

Yes, sir.

15. Yet you say you were under Mr. Kelly?

He did not stay in the office all the time.

16. About how much time was Mr. Kelly there, roughly speaking?

During the first part of the time I was in the office Mr. Kelly was in for several weeks. He generally stayed several weeks at a time. He came about every three or four months—sometimes oftener.

17. During his absence you had full charge of the office work?

Yes, sir.

18. Did you know Nat Wazey?

Quite well.

19. Was he in the employ of the Wright-Blodgett Co. when you went to work for them?

Yes, sir.

20. In what capacity was he employed?

He was a woodman.

21. What do you mean by a woodman?

(For emphasis the objection of irrelevancy was here made by counsel for defense on ground that the employment of this

witness, not having taken place until the fall of 1901, nothing that he knows can be relevant to any act or allegation set forth by the pleadings at issue in these cases.)

Well, he was employed to inspect timber for the  
96 company and make reports on it.

22. What else did he do?

At that time the company's holdings were scattered. They were trying to "block up."

23. What do you mean by "block up"?

They were consolidating their holdings.

24. They would buy lands in between lands they already owned?

Yes, to make their holdings contiguous.

25. How many men were employed as woodmen?

No one else. That is, regularly.

26. Do you know whether there was any record in the office of this company that showed that the lands upon which Wazey would report had been gone over or cruised at any other time?

When the company bought they had the cruisers report on what they bought.

27. Was there any record showing a prior report to that made by Wazey?

In some cases, yes. I remember in some of the townships where the company bought they had a cruisers' report on nearly everything in the whole township. That was for the general office record, showing where was the good timber land.

28. These reports made by Mr. Wazey were made for what purpose?

The purpose of buying. Wazey would make his report as to how much timber there was on the land, which gave the company a good idea how much to pay for the land.

29. What investigation would be made by the company as to titles of these lands that Mr. Wazey would report on?

Well, in cases where there was any doubt at all or any long chain of title we had abstract made. In other cases where there was a patent or receiver's receipt to go by we simply took that first record.

30. It is a fact that the company would buy upon  
97 the report of Mr. Wazey as to the timber?

(Objected to as leading.)

And a fact that where there was a receiver's receipt for the land or the patent they would go by it?

If there was just a receiver's receipt or patent and no other chain of title and if there was timber on the land the company felt justified in buying it.

31. In these cases when Mr. Wazey would report as to the status of the title to the timber on land and as to whether the land was held under a receiver's receipt or patent would any other investigation be made before the company purchased?

No, except that usually—and, I should say, in almost every case—either the receiver's receipt or the patent was sent to the office.

32. But they would send no one to the land to make investigation?

We would send no one from the office if we had a receiver's receipt or patent, any more than we would send anyone to Alexandria or to Lake Charles to investigate as to an abstract.

33. The [then], I understand your testimony to be that the company would buy in cases where there was a patent or receiver's receipt upon the report of Mr. Wazey?

Yes, sir; that is a fact.

34. Without any further investigation?

Yes, sir.

35. Was Mr. Wazey located in Lake Charles, or did he live in the country where he bought timber?

He lived in the woods.

36. Was it part of his business to live in the woods and go around where the land was?

(Objected to as leading.)

He could find out thing at less expense by living in the woods.

37. Where did he spend his time?

98 In the woods.

38. Now, Mr. Foster, from your experience in the office and your examination of the records and familiarity with them and from your conversations with Mr. Kelly and with Mr. Wazey, do you know how long prior to the time you went into the office Mr. Wazey had been employed by the company?



(For emphasis the objection is here made by counsel for defendant that the question calls for secondary and hearsay evidence which is inadmissible and is hereby objected to.)

I don't know just how long. I know it was some years before I went in. Possibly, maybe three, years.

39. Do you know in what capacity he had been employed prior to the time you went into office?

(Same objection here made by counsel for defendant.)

I don't know, but I suppose it was in the same way.

40. For what reason do you suppose it was in the same way?

For the reason that no change was made in the office when I went in, that I know of.

41. Did the records of the office show in any way what his employment had been?

Practically the same.

42. Just the same as afterwards?

Yes, sir. He got his salary just the same as afterwards.

43. In what way would these lands bought through Wazey be paid for?

Currency, usually.

44. Who would do the paying?

Most of the time Mr. Wazey; once in a while Mr. Kelly, and occasionally I went up. Sometimes other people would pay when they bought through some other agent.

#### Direct Examination Continued.

By Mr. Elstner:

45. You know the domicile of the Wright-Blodgett Company?

Saginaw, Wesside, Michigan.

46. Firm or corporation?

99 A partnership association, so the deeds all recite.

47. Do you know the individual members of that partnership association?

I know some of them.

48. Give their names.

I can only state positively as to the officers—Mr. Davis, Mr. Blodgett and Mr. Stork.

(For emphasis the objection is here made by counsel for defendant that the testimony is irrelevant.)

49. Do you know that any of those whose names are mentioned by you came to Lake Charles and in person supervised or conducted the affairs of the partnership?

Mr. Stork came down about one [once] a year usually. He always stayed at the office.

50. Do you know that Mr. Stork at any time went out and made personal investigations of the lands to be acquired by Wright-Blodgett Co.?

I don't believe so. Not to my knowledge.

51. Who exercised general supervisory control over the affairs of the Wright-Blodgett Co. in Louisiana?

Mr. Michael H. Kelly.

52. Do you know about what time Wright-Blodgett Co. began their operations in Louisiana?

In 1898, I believe.

53. What time did Mr. Kelly assume supervision of the affairs in Louisiana?

I do not know. I suppose when the company came into Louisiana. Mr. Kelly had charge when I went in in 1901.

54. You don't know how long prior to 1901 he acted in that capacity?

I don't know, but I suppose from the beginning.

55. How long prior to 1901 had you known Mr. Kelly?

Two years or more.

56. Where?

In Lake Charles.

57. You saw Mr. Kelly frequently prior to 1901?

100 Yes, sir; I saw him often. Our offices were adjoining. That is, there was only a door between his office and that of my father.

58. Were you ever in his office prior to 1901, either socially or otherwise?

Yes, sir.

59. Did you know from your visits to his office and from the observations you there made in what business he was engaged prior to 1901?

Yes, sir. He managed the business of Wright-Blodgett Company.

60. Did you know him as early as 1898.

That is so far back I hardly remember, but I believe that is about the time I first saw him.

61. From that day on from your observations you know he was engaged in connection with the Wright-Blodgett Co.?  
Yes, sir.

62. Do you know whether or not Mr. Kelly visited the lands that were subsequently purchased by the Wright-Blodgett Co. prior to their purchase?

I don't know whether he saw all of them, but I suppose Mr. Kelly must have looked over the main purchase before he purchased. (By main purchase meaning original purchase about 1898 of the Fairbanks and Head and other lands.)

63. Do you know of Mr. Kelly's going with Mr. Nat Wazey at any time to any of the lands purchased at the suggestion of Mr. Wazey in order to look over them?

Yes; frequently he went with Mr. Wazey into the woods to verify his estimates and things of that kind.

64. Do you know where Mr. Nat Wazey had a homestead where he lived in the woods?

Yes, sir.

65. Did you ever visit him there?

Yes, sir.

66. Did Mr. Kelly ever go with you there?

101 Yes. I made one or two trips with Mr. Kelly; may be several.

67. Ever stop at Mr. Wazey's all night?

Several times.

68. Mr. Kelly also?

Yes, sir.

69. Were you ever present at the time that Mr. Wazey paid for any of these lands?

Yes; several times.

70. Now, these deeds, without taking them up separately, specify that there was so much paid in cash as a consideration of the purchaser from the man who held the final receipt—that is, the entryman. At the sales at which you were present, did you see the money paid?

(At this point counsel for defendant asks counsel for com-

plainant if, in the question above, he was referring to the lands in controversy in the bills now before the court, and in reply counsel for complainant substitutes the following question for Q. No. 70.)

71. Do you know anything, of your own knowledge, in regard to the sales of the lands by the homesteaders to the Wright-Blodgett Co. by being personally present and witnessing the sales prior to that date?

Late in the fall of 1901. I think in the month of December; might have been November.

72. At no sale prior to 1901 were you present?

No, sir.

#### Direct Examination Continued.

By Mr. Mills:

73. Do you remember the numbers of the lands on which Wazey lived?

Section 28, Township 1 South, Range 5.

74. You are positive as to that?

Yes, sir.

75. When was it that you visited him?

Oh, I don't know how many times.

76. Was Wazey living there with his family?

Yes, sir.

77. He had his household goods?

102 Yes, sir. He made his home there.

78. Do you know how long he lived there? When was the first time you saw him there?

Soon after I went in with the company, within a few months. He had just moved there from Slabtown.

79. How long do you remember that he lived out in the woods?

He was living there when I left the employ of the company. The place was called Sigler.

80. When did you leave the employ of the company?

The 1st of March, 1904.

81. Did he live at any other place during that time?

No, sir.

## Cross Examination.

By Mr. Monroe:

1. These visits which you say you made to Mr. Wazey in company with Mr. Kelly were all made after your employment with the Wright-Blodgett Company in 1901, and the earliest visit you remember of making was some month or two after your employment?

Yes, sir.

2. If I understood you correctly, you stated the company had caused to be made a general cruisers' estimate of the timber in that section of the country?

No, I did not state that they caused the cruise to be made, but I believe they had such a cruise from Mr. J. D. Lacy & Co.

3. Who are J. D. Lacy & Co.?

Real estate men with an office in New Orleans.

4. Do they or do they not make a business of making these timber cruises or estimates?

It is their principal business, or was at that time.

5. How do they stand in the business and how are their estimates considered by timber people?

Of the best.

6. You are connected with the timber business to some extent? And have been for some time?

Yes, sir.

7. Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacy & Co., without making any special investigation themselves?

That is the usual case; the usual method of doing business.

8. You say Wright-Blodgett Co. had the estimates of J. D. Lacy & Co. for that part of the country?

Yes, sir. I think it was made before their original purchase and I think they got their figures from Lacy for the original purchase?

9. What acreage was their original purchase?

I have forgotten now.

10. Approximately?

Something more than 100,000 acres.

11. During your incumbency of office under Wright-Blodgett Co. did any law firm examine and pass on titles for them?

Yes, sir; Pugo & Moss of Lake Charles.

12. What was the custom of Wright-Blodgett Co. relative to examination of titles by Pugo & Moss?

They turned all abstracts over to them for their opinion before they were sent to the home office.

13. Did they examine the title before the sale was actually concluded?

Well, in some cases they did and in some cases they did not.

14. Was it the custom of the office to submit the title to Pugo & Moss for examination, have them approve it and then pass the deed and record it and then submit the entire abstract with deed to them and have them write their approval on it?

That was the case during the latter part of the time I was in office, but when there was a patent or a receiver's receipt sometimes we bought and paid for the land before the title was approved.

15. I take it that in all cases where Pugo & Moss gave a written opinion on the back of an abstract that the title had been examined before purchasing and subsequently had been submitted to them for opinion and written approval?

That is a fact.

16. Was J. M. Boyd in the employ of Wright-Blodgett Co. during the years 1901-02, or prior to those years?

He was never in the employ of the company while I was with them, and I don't believe before I was with them.

17. The Wright-Blodgett Co. bought considerable land out in that neighborhood, did it not?

Yes; more than 50,000 acres, I suppose.

18. Was it not the custom of Wright-Blodgett Co. to insist upon the delivery to them of a final receipt or patent before paying for land?

Yes, it was always the case.

19. Their instructions to the office were to buy nothing unless they had either a receiver's receipt or a patent?

Well, unless in the case of a complicated title; one that had passed through many hands. Then we would not insist upon receipt or patent. But if the only instrument was a patent or receiver's receipt we always got the one or the other, unless it might be where the company bought only a part of a homestead, and then, although we got the patent, we returned the patent to the entryman. But in case of receiver's receipt we got it. That was always before the sale was closed.

20. Mr. Foster, you spoke of certain handling of cash in purchases by Mr. Wazey, and in asking some of the questions attorneys for complainant used the expression "these lands." It is important to find out what lands were being referred to. You would not, for instance, in answering those questions have been referring to any deed which was made prior to the time you went into the employment of the Wright-Blodgett Co. in 1901, would you?

No, sir.

21. The testimony of that subject was relative  
105 to some transactions subsequent to that date?

On lands generally during the time I was with the company. Nothing prior thereto.

22. When you went into the employ of the Wright-Blodgett Co. was any one else purchasing lands and timber for them besides Mr. Wazey?

Yes; Mr. Wingate at Leesville bought some, and Lewis Melder of Glenmora bought some.

23. You stated on your direct examination that you supposed that Mr. Wazey had been buying before you went into the employ of the Wright-Blodgett Co. in 1901. Did that supposition apply equally to these other gentlemen who were purchasing?

Yes, sir.

#### Redirect Examination.

By Mr. Elstner:

1. Did you have in the office of the Wright-Blodgett Co., in Lake Charles, a general map showing the pine lands in the several parishes around?

We did.

2. Did that map show the lands owned by individuals and also the lands then belonging to the public domain of the United States?

No, the maps showed the ownerships by private corporations of the principal big holdings throughout the pine belt.

3. Then the Wright-Blodgett Co., or its officers in Lake Charles, had no knowledge of the pine lands in Vernon, Rapides and Calcasieu parishes except insofar as they were owned by corporations or individuals?

The white places on the map would show that other corporations did not own that particular land.

4. Then you would take it that all the lands not appearing on the map as owned by corporations or individuals were public lands?

106 No, because we did not mark up the individual lands. If there was an individual ownership of it, say, a quarter section, we did not note it on the map.

5. Did the Wright-Blodgett Co. ever keep maps or records of any kind in its office for a knowledge of the lands belonging to the public domain in these parishes?

Yes. From time to time we got such records. Not generally, but in special cases we have seen maps showing the ownership of all of the holdings and that which was not colored was public domain land. In other words, in the company's office, in "blocking up" their lands, we tried to know who owned all of the intermingling lands.

6. As a matter of fact, the value of pine lands depends to some degree on the compact forms in which that land is located, does it not?

Yes, sir; and a big degree, too.

7. Was it not the purpose of the Wright-Blodgett Co., knowing this fact, to try and secure as large a tract of land in compact form as practicable?

Yes, sir.

8. Did they not make inquiries, both from maps and from personal investigations, with a view of ascertaining the location and ownership of lands that would facilitate them in carrying out this object?

They did.

9. In doing this would they not necessarily ascertain lands in juxtaposition to their own that were within the public domain?

They did.

10. Did Mr. Kelly and Mr. Wazey, or other representatives of the Wright-Blodgett Co., frequently visit their holdings?

Mr. Wazey was on the ground all the time; Mr. Kelly made periodical trips, and I have been on it several times.

11. With reference to the trips made, what would you call periodical trips?

Every time he would come down, which was every three or four months.



12. When Mr. Kelly was away you were in charge of the office?

Yes, sir.

107 13. During his absence did you exercise the same kind of supervision over the affairs of the company that Mr. Kelly did in person when present?

No; I referred everything to Mr. Kelly.

14. I do not mean did you exercise the same degree of control over the affairs of the company, but did you frequently visit the holdings of the company in order to ascertain the existing condition during his absence.

I did.

15. You had on the map of the company, and from that map could determine the localities visited by you when going over the holdings of the company?

(For emphasis the objection is here made that this testimony is totally irrelevant for the reason that witness has repeatedly stated he was not employed by the company until 1901 and subsequent thereto, and that all the purchases in these cases by Wright-Blodgett Company were prior to that date.)

16. Whenever you visited these holdings did you have an opportunity of becoming acquainted with the people living in the community?

To a certain extent, yes.

17. Did you have an opportunity of seeing in what kind of business they were engaged?

Most of them were farmers.

18. Did you have any opportunity of observing or judging of their apparent financial condition?

They were just like the ordinary piney-wood folks.

19. Do you know in what amounts, if any, money was sent from Lake Charles to Nat Wazey at Glenmora?

Money was sent there only once or twice, possibly three times, to my knowledge.

20. Do you know in what amounts?

I do not recall; something like \$1,000.00, possibly more.

21. Do you know where the Wright-Blodgett Co. kept, either as a firm or through their agents, their bank account in the city of Lake Charles?

They had no bank account in Lake Charles.

22. Did Mr. Kelly have a bank account in Lake Charles?  
He did.

108 23. At what bank.  
Calcasieu National Bank.

24. Do you know whether Mr. Kelly kept that money on deposit there or received the money in that bank as his own individual funds or as an agent for the Wright-Blodgett Co.?  
I suppose that it was the Wright-Blodgett Co.'s money.

(For emphasis objection is here made that this is merely hearsay)

25. Why do you suppose it was Wright-Blodgett's money?  
Because it was used for the company.

26. Can you state whether or not on three or more occasions that out of that fund as much as \$2,000.00 at a time had been sent Nat Wazey for lands acquired?

Yes, but I don't know how many times; several times. And I don't remember the exact amounts. There might have been more money than that sent to him at times. Usually he got enough money to pay for the lands he had written in about. If several sales had been made he might have gotten as much as \$5,000.00 at one time, but if only one sale it would have been correspondingly less.

27. Do you know of any money being sent to Wazey at any time that was used by him for the payment of the purchase price of lands that were sold by the entrymen under final receiver's receipt and was paid to the entrymen by Wazey and the final receipt turned over to Wazey and then subsequently delivered to the representatives of the Wright-Blodgett Co. at Lake Charles?

(By way of emphasis the objection is here made that any answer to this question which does not pertain to land described in the bills in one of the cases now before the court will be irrelevant, and that any answer which may pertain to lands described in one of the bills will be irrelevant as to the other eight, which objection is here made for emphasis.)

Yes, sir.

28. Do you know how often that occurred?

(Same objection made here as to No. 27.)

Every time they bought on final receipt.

29. You have been in the land business and Mr. Kelly has been in the land business for a long time. Are you familiar with the homestead laws of the United States?

109 (Objected to as irrelevant.)  
I am.

30. About how far from Lake Charles are the lands held by the Wright-Blodgett Co.?

You mean "were held," do you not? They don't own any now?

31. Yes, sir. About how far from Lake Charles were the lands known as the lands of the Wright-Blodgett Company?

About sixty miles.

32. About how far from a railroad?

About twelve miles, the nearest of them. They had some scattered lands within four or five miles of the Watkins road.

#### Re-Examination Continued.

By Mr. Mills:

33. Who held the same position occupied by you prior to the time you went to work for the Wright-Blodgett people?

(Objected to for emphasis as hearsay.)

Thomas E. Dickens.

34. How do you know he was employed by them?

I have seen him there. Our offices were next to each other.

35. For how long a period was he employed by them prior to the time you went to work for them?

A couple of years.

36. Was he the only man in charge of the office or were there other men in the office with him?

He was the only one.

37. Where is he now?

I don't know.

38. Mr. Monroe has called your attention to the fact that a cruise or report had been made on lands in this territory

about 1898. In cases where lands were bought upon the recommendation and report of Mr. Wazey what would govern the action of the company, the report of Mr. Wazey or the record of the cruise?

As a general thing there would not be much difference between the reports, but if there should be Mr. Wazey was sent back to see if an error had been made.

39. If he stated that no error had been made in

110 the report, what action would be taken?

His report would be accepted.

#### Recross Examination.

By Mr. Monroe:

1. About how often (during the course of your employment) in a year would you get on any individual forty belonging to the Wright-Blodgett Co.?

I should say on an average of every three or four months.

2. That was on the holdings belonging to them?

Yes, sir; to the Wright-Blodgett Company.

#### 2ND. EXAM. OF MR. BEN M. FOSTER.

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#### Direct Examination.

By Mr. Elstner:

1. Mr. Foster, did you at any time deliver money in person to Mr. Nat Wazey for the purpose of purchasing land for Wright-Blodgett Co.?

A. I did.

2. About how many times?

A. Several times. I don't remember how many times.

3. State about what amounts.

A. Usually about \$1,000.00 at a time. I have delivered as high as \$5,000.00 at a time.

4. Within what period?

A. During the time I was with the company in the fall of 1901 to the fall of 1904.

5. Where would you deliver this money to Wazey?

A. Sometimes in Lake Charles. Sometimes in Sigler. Maybe once or twice in Glenmora.

6. You delivered it as a representative of Wright-Blodgett Company?

A. Yes, sir.

### Cross-Examination.

By Mr. Monroe:

1. As I understand, Nat Wazey would go out through the country and get price on various lands, would bring them back and submit them to the Lake Charles office of Wright-Blodgett Co., the Wright-Blodgett Co. would then have the titles passed upon, and if the prices were all right and the titles correct would instruct Mr. Wazey to purchase and would give him money to complete the purchase with.

A. That is correct.

2. And in all those cases was the title examined before the act of sale was actually passed?

A. In most cases. There might have been a few cases. If you mean by attorneys, I will say "In most cases"; if you mean by the office, I will say "In all cases."

3. In one or two cases when Wazey broke through that rule he was held personally responsible for the purchases, he having purchased without submitting back to the  
112 office first?

A. Yes, sir; that is a fact.

4. When you were last on the stand you stated at some time during your holding of office under the Wright-Blodgett Co. that it became customary when Wazey submitted simply a final receipt to authorize the purchase without having the abstract made and submitted to attorneys. Was that the custom when you first went into office?

A. No; when I first went into office it was the custom, and I believe, instructions, that all titles had to be examined by Pugo & Moss before any deeds were passed.

5. And after you went into office they having always approved final, receipts, you fell into the habit of not submitting final receipts to them any more. Is that correct?

A. Yes; final receipts and patents. If titles were based on final receipt or patent, having been approved before then, we did not go into the trouble and expense of having abstract made to show one item. We put the deed on record and then had abstract made showing title in Wright-Blodgett Co., and then

turned it over to the attorneys for approval. That was more as a matter of form.

6. At the time you first went into office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pugo & Moss for approval?

A. Yes, sir; all titles.

6. Mr. Moss testified this morning that it was the opinion among local members of the bar at that time that purchasers were justified in buying on a patent or final receipt without further investigation. When you first went into office was any advice of that character given to you by the firm?

A. I don't remember any special advice, but that was my understanding—that either a final receipt or a patent was as good as a title could be.

113 (Counsel for complainant in these cases makes no special objection here to the irrelevancy by reason of the witness being called upon to state the efficacy of the correctness or incorrectness of his conclusions at the time as to questions of law, but rests the right of objection to all testimony taken in this case on the special right specified and agreed to by both counsel for complainant and counsel for the defendant in the beginning of the taking of this testimony, thinking it unnecessary to specifically reiterate the safeguards set forth in this first understanding.)

7. Mr. Foster, you have had some experience as a timber estimator?

A. Yes, sir.

8. When a timber estimator goes on land and estimates timber does he pay any particular notice to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact of how the house is located on the land. Also make a note of the fact of how much has been cleared in order to justify any statement that is made as to the timber.

9. Do you make any statement as to the condition of the house?

A. None whatever—I don't.

10. Do you pay any particular attention to the condition of the house?

A. Not to the house; simply as to how much land is cleared.

11. You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

12. That is the custom observed among all timber estimators?

A. Yes.

13. You stated a while ago that you had given sums of money of from \$2000 to \$5000 to Wazey in cash. Those sums of money were given him to pay for specific purchases which had been submitted to the office, titles approved and he authorized to buy?

A. In all cases.

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## Re-Examination.

By Mr. Elstner:

(Counsel for asking if in two or three instances Mr. Nat Wazey made purchases for which the Wright-Blodgett Co. afterwards held him responsible for the reason that they had not been approved beforehand by Wright-Blodgett Co., witness answered that Wazey was charged with these sales.)

1. Was any sum of money withheld from Wazey in order to make him responsible for any errors that might have been made in purchase?

A. Yes, in two or three cases Wazey was charged with land that he had bought without submitting titles, and afterwards we found some discrepancy in the title. That amount remained charged against him (Wazey) until he had titles straightened.

2. Did either of these instances to which you refer apply to purchases made by reason of a final receipt?

A. I don't recollect. I remember that we held, I think, two sales on Wazey's account. But whether on receiver's receipt or something else I don't recall. I think one of them was on account of a defective tax title. But I don't exactly remember.

3. You have stated that you never made any inquiry fur-

ther than to find the existence either of the patent or the receiver's receipt in cases of that character?

A. No; we always accepted them, except towards the last few months I was in office. That was after the investigation up there by Mr. Ervin, special agent.

4. Then it is not probable that any of the instances to which you refer wherein Mr. Wazey was held responsible for his purchases occurred in cases of either patents or final receipts?

A. I don't recollect the special name that Wazey was charged with.

5. But it was in case of either patent or final receipt?

A. It would have been in either a case of patent or receipt because all titles went back to that.

6. Counsel for defendant asked you if you would, when going upon the lands covered by a final receipt, either  
115 as a timber estimator or for the purpose of viewing the lands, you paid any attention to the character and extent of improvements, and you answered, no, only to the extent and for the purpose of observing the value of the timber standing on the land at the time.

A. That was the only report we would make. We would notice them generally, but would pay no attention to them. We would consider improvements on timber land as of no value. It was simply timber we were looking for.

7. Are you familiar with the forms used in acquiring title to the public lands of the United States under the homestead laws in making both the five-year proof and the commutation proof?

A. I am; yes, sir.

8. In going upon these lands would you make any investigation for the purpose of ascertaining whether the entrymen had complied with the laws so as to entitle them to a final receipt?

A. I never did.



## TESTIMONY OF H. H. ROCK.

Mr. H. H. ROCK, witness in behalf of complainant, being duly sworn, testified as follows:

## Direct Examination.

By Mr. Elstner:

1. Where do you reside?

Lake Charles, La.

2. What business are you engaged in?

Banking business.

3. With what bank?

Caleasieu National Bank.

4. Have you with you a statement from your shipping book?

I have the shipping book?

5. I wish you would turn to that book and find any shipments that may have been made to Mr. Nat Wazey from your bank.

The only one I find is on October 7, 1902, a shipment of \$2,000.00 to Glenmora, La., sent by express.

6. At whose instance was that shipment made?

I could not say as to that. I don't remember that far back.

7. Don't your book show?

That book does not show.

8. Have you a book that does show?

Well, unless there was some check given for it it would not. If it was charged to someone's account it would show.

9. Do you know at whose instance that shipment was made?

I could not say positively who ordered the shipment made.

10. Do you know out of what fund it was shipped?

No, I do not know for sure.

11. You have no knowledge out of what funds it was shipped?

No, sir.

12. Was it out of a fund belonging to Nat Wazey personally in the bank?

A. I don't think so; I could not say positively without looking it up.

13. Is that the only one in that book? Any shipments prior to, that time?

I haven't looked clear through the book.

14. I will ask that you take the book and make close examination and find all the shipments that have been made, as shown by that book, from 1898 up to 1903.

The book does not commence until 1902.

15. I will ask why you did not comply with your subpoena duces tecum?

Because that was the first shipping book that we ever used. Our business was so small before that time that we just used our express books as receipt. We did not have a regular shipping book.

16. Did you have any books or records in your bank that corresponded with the book that you produced herein in obedience to the order of the court?

A. No, sir.

17. Any records which showed shipments made by the bank prior to the use of this book?

A. Yes, sir.

18. What do you call them?

Express books.

19. Are they now in possession of your bank?

I don't know just where they are if they are.

20. You don't know whether they are in the possession of your bank or not?

A. No, sir.

21. Were you in the bank then?

Not prior to 1900.

22. And 1902 is the time you first commenced keeping this book?

A. Yes, sir.

### Direct Examination.

By Mr. Monroe:

1. Mr. Moss, you are an attorney by profession and are a member of the law firm of Pugo & Moss of Lake Charles, La.?

2. Yes, sir.

2. That firm has been practicing law in Lake Charles since some time prior to the year 1898?

Yes, sir; since 1896.

3. Was your firm employed by the Wright-Blodgett Co. in or about the years 1898 and 1899?

Yes, sir. My recollection is that the employment began about 1899.

4. What was the nature of that employment?

Our firm was employed to pass particularly upon abstract of titles upon lands the company was acquiring in the parishes of Calcasieu, Vernon and Rapides, and also to advise representatives of the company at Lake Charles in reference to the purchase of lands.

5. What was the custom adopted by your good selves and the Wright-Blodgett Company relative to these examinations of title?

Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office after the deeds were acquired from the different owners, and these deeds were carried on the abstracts so that our opinions would show our opinion of the titles in the Wright-Blodgett Company. In some cases that I recall there would be two written opinions.

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#### Cross-Examination.

By Mr. Miller:

1. When your connections with the Wright-Blodgett Co. began, who was in charge of their office at Lake Charles?

Mr. Michael Kelly.

2. Who made arrangements with you for your employment?

My recollection is that Mr. Kelly did. That is my recollection of the matter. He might have had the arrangement approved by the home office.

3. Do you remember when Mr. Ben Foster went to work for the Co.?

Mr. Foster went to work for the company at Lake Charles, but I can not give you exact date. To the best of my recollection it was near 1902. I can not state the date definitely.

4. Prior to his employment who was employed in the office of the Wright-Blodgett Company?

Mr. Kelly was in Lake Charles himself at the beginning. After Mr. Kelly was there for sometime and returned North, Mr. Thomas Dickens was in the office for some months. I can not give you the exact length of time. After Mr. Dickens my recollection is that Mr. David Livingstone, a young man of Lake Charles, was there several months.

5. Where is Mr. Livingstone?

At Lake Charles. And then I think Mr. Foster followed Mr. Livingstone. With reference to the time these parties were in the office I am testifying from recollection. Mr. Kelly and Mr. Stork would know better than I.

6. Who would bring these abstracts and deeds to your office for examination?

When Mr. Kelly was there he would bring them. In his absence Mr. Dickens would bring them, or Mr. Foster, or Mr. Livingstone, as the case might be. If Mr. Kelly was in the office he usually brought them in.

7. How much time was Mr. Kelly there?

When Mr. Kelly was first in Lake Charles, about  
120 1899 or 1900, he was there for twelve months or more (I can not give the length of time-definitely), for one or two years.

8. Constantly?

He would return to his home in the summer time.

9. Did you have any dealings with any other employe of the company besides those you have mentioned?

No direct dealings that I can recall. The parties I have mentioned were the parties in the local office at Lake Charles. The local office was in the same building in Lake Charles as our law office—the First National Bank Building.

10. Do you know whether or not from 1898 to 1902 a man by the name of Nat Wazey was employed by the company?

Nat Wazey did some work for the company out in the field.

11. Do you know whether he was regularly employed or was employed spasmodically?

A. I could not answer that question because I really don't know. Mr. Wazey was at that time living in the northern part of Calcasieu or about the edge of Vernon Parish, and I did not see him in Lake Charles more than twice a year. He was out in the country.

12. In looking over these papers, abstracts, deeds, etc., did

you ever have any occasion to look over or notice any reports from Nat Wazey regarding any transaction?

No, sir. No report from Wazey would ever come to our office; at least, I recall none.

13. Mr. Moss, how is it that you know then that Nat Wazey was employed to do field work as far back as 1898 by the Wright-Blodgett Co.?

I don't know, Mr. Mills, that it extended that far back.

14. How far back do you know it extended?

I can not tell you with any certainty.

15. How long prior to the employment of Ben M. Foster do you know Nat Wazey was connected with the company?

I can not answer that question either. It has been 121 about five or six years ago, and my recollection is that Mr. Wazey was doing some work while Mr. Foster was in the local office, but as to how far beyond that time or prior I could not fix that.

16. Do you know that he was employed by the company sometime prior to the time Mr. Foster took up the work?

No, sir; not with certainty enough to answer. Mr. Foster had been at work for the Orange Land Company down there, and I think that Mr. Kelly employed him and he changed right over to the other office; but I cannot fix the exact time.

17. Do you know whether Wazey was employed by the Wright-Blodgett Co. prior to 1902?

I can not swear that he was.

18. Do you know?

It is likely that it was prior to that time, but I can not say positively without referring to documents or something that might show such employment. I can not from recollection. It is six years back and I can remember about the dates.

19. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett people?

I think all but the first transaction. My recollection is that when the company first organized that it embraced a very large tract of land from parties in Chicago—the Fairbanks people—and according to the best of my recollection that purchase was made before Pugo & Moss ever saw the abstracts of title.

20. In cases where the Wright-Blodgett Co. would purchase direct from entrymen or government land, would you be called upon to pass upon such titles where there were no transfers—nor intervening transactions?

That is my recollection; that the abstract would be brought in; either before or after issuance of patent the abstract would always be brought in showing the issuance of the patent or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, written opinions would be given, and then, after the deed  
 122 was acquired in the name of Wright-Blodgett Co., either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards Mr. Kelly explained to us that he wanted opinion from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that, in event of sale of land, subsequently these written opinions could be used.

21. Did you make up a new opinion in each instance when receiver's receipt and patent were submitted to you?

Yes, sir; that is my recollection.

22. You are not positive about it?

It might have been that in a very few cases the deed was taken before the abstract was brought in, but my recollection is that the rule was otherwise.

23. What did the abstract show in a case where there had been no transfer and the Wright-Blodgett Company was purchasing direct from entrymen after the issuance of receiver's receipt?

In such case, if it was before the issuance of patent and after the issuance of final receipt, it would simply show issuance and record of the final receipt. In other words, we did not have the affidavit of the entryman before transfer.

24. In these cases of purchases after the final receipt but before patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the homestead law had been complied with?

No; we would have the naked abstract showing just the issuance and record of final receipt.

25. During the years of your employment by the Wright-Blodgett Co. you talked frequently about land matters and titles with Mr. Kelly, did you not?

Yes, sir; but only with reference to the validity of the titles as was shown by the abstracts and in a general way about them. The idea I want to convey is that Mr. Kelly did not talk his private business with me.

26. In his talks with you in regard to the validity  
123 of titles, did he display a thorough knowledge of the  
homestead law of the U. S.?

I can not testify as to what knowledge Mr. Kelly had at that time of the homestead law of the U. S.; that is, as to what is required in the matter of proof and residence, etc., by the homestead entrymen, I can not say what knowledge he had of those matters.

27. Now, Mr. Moss, you are a lawyer and an intelligent man and you know you have talked many times with Mr. Kelly in regard to these land matters. Now, I don't presume that you can look into Mr. Kelly's mind and state the exact extent or condition of his knowledge, but you can state whether or not from your conversation with him he showed a general thorough knowledge and understanding of the government land laws in regard to homesteads. I ask you to state that.

I can not say that Mr. Kelly when he came to Calcasieu parish about 1899 had a general knowledge of the homestead laws, because I do not recall that we ever discussed them with Mr. Kelly at that time, but we did, in later years, when the government inspectors were sent into Calcasieu, Vernon and other parishes, and it was reported that there had been some fraudulent entries, caution Mr. Kelly particularly about the acquisition of lands on the issuance of final receipts unless the entrymen were complying with the laws, and insisted upon his finding out whether such entrymen were complying with the laws as to cultivation, residence, etc. In other words, Mr. Kelly was a stranger to our firm (Pugo & Moss) when he first came to Louisiana in 1899 and we did not know what experience he had had in land matters prior to his coming to Louisiana.

28. Mr. Moss, I don't consider that you have answered the question. I again ask you, from your experience and dealings with Mr. Kelly between the time when you first met him and he was a stranger to you in 1899, and the time when the inspectors were going about the country in 1902, what impression he created upon you as to his his knowledge of land matters and government land laws.

I will have to say in answer to this Mr. Kelly did  
124 did not display any great knowledge of land matters  
and land laws because he would not make a purchase  
without coming to the office with his abstract and asking our

opinion as to the title, and at that time Mr. Kelly was known to us as an expert timber estimator rather than a man who knew the land laws.

29. Did you ever discuss with him these questions of title?

I don't recall that we ever had any discussions with Mr. Kelly about the acquisition of titles further than to report directly on the abstract until it was rumored that the government was making investigations in that territory.

30. Did you advise the Wright-Blodgett Co. that before transferring any land that they had purchased upon a simple receiver's receipt that it would be advisable for them to make an investigation before they sold the land to any one else?

No, sir; I don't recall that we ever gave any such advise to him or ever thought it was necessary, because up to the time of these rumored investigations we did not know of a single case that had come up in our courts in Southwest Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making, themselves, any special investigation of it.

31. After you had learned of these investigations and had become convinced that a purchase upon a simple receiver's receipt was not a safe purchase, did you advise the Wright-Blodgett Co., or did they advise with you as to whether or not it would be proper for them to have investigated lands that they had already purchased upon a simple receiver's receipt as to whether or not the homestead laws had been complied with?

No, sir; we did not go into the question of any past transactions but talked with them about future transactions, to be careful and see that the law was complied with.

32. Now as to future transactions—did you advise them or did they advise with you as to whether or not it would be safe or proper for them to sell to third persons lands acquired by them upon a simple receiver's receipt without making investigations about the compliance with the law?

No, I don't recall that that question ever came  
125 up or was discussed in the office.

• 33. Can you remember the exact date, or the approximate date when the Wright-Blodgett Company became aware of these investigations?

No, sir; I can not fix the date definitely.

24. About when?

I can only approximate the time and I can not get it definitely



within a period of over three years, about 1902-1903-1904. I don't remember exactly when the investigations were begun, and we did not find out about them until some time after that, because the government people worked quietly and secretly. I should say along about 1902, '03 or '04.

35. When you called the attention of Mr. Kelly, or any other representative of the Wright-Blodgett Company to the importance of having investigations made when they were about to purchase lands under a receiver's receipt and before the issuance of patent, was anything at all said about purchases made under those circumstances prior to the hearing of these rumors of inspection?

No, sir; I don't think that past transactions were ever referred to.

36. Now, Mr. Moss, you know that many such purchases had been made prior to that time?

Yes, sir; I know quite a number.

37. You are absolutely sure that when you told these people that there was a question as to the validity of title thus acquired unless the law had been complied with that they asked you absolutely nothing at all about purchases that had already been made under those circumstances?

That is my recollection.

38. Mr. Moss, you do not know as a fact that in cases of purchases upon a simple patent or simple receiver's receipt that you were always consulted under these circumstances?

I can not swear that I was consulted in every case.

39. You have never examined the records of all  
126 lands acquired under any circumstances by the Wright-Blodgett Co. and then checked that up against opinions rendered by your office to ascertain whether or not your office had rendered opinions in cases of all lands?

No, sir.

40. Then, for all you may know or recollect, they may have made a number of purchased [purchases] upon receiver's receipt or patent where there had been no intervening transfers without consulting you?

Such a thing is possible, but our understanding is that every transaction passed through our office except the original purchase made, as I recall, from the Fairbanks, which was a very large purchase made by Wright-Blodgett Company, and I think

that abstract reached the office at some subsequent date and was examined.

### Re-examination.

By Mr. Monroe :

1. Mr. Moss, on your cross-examination informally in the course of explanation given to the assistant district attorney you explained the attitude of the Calcasieu bar prior to the coming of the government inspectors into Calcasieu Parish on the subject of titles based on final receipts from the government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the government inspectors?

Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt which showed that he had made his final payment that it was absolutely safe to approve the title. There had been no suits in our courts that I can recall where any charges of fraud was ever made relating to any entries and the lawyers, while they might have been mistaken, thought a final receipt to be equivalent to a patent.

2. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

1. The first time that the matter was called to  
127      our attention was when the investigation was started  
by the government to which I have referred, and I cannot give the exact year.

3. In the course of the cross-examination counsel for complainant seemed to think it strange that after your attention was called to this possibility of trouble no reference was made in your conversations with Mr. Kelly to titles acquired prior to that time. How do you account for the fact that no reference was made to prior acquired titles?

The only way to account for that is that at the time of these investigations the discussion came up as to future care in the acquisition of title where final receipt only had issued; that for the past transaction the patents had at that time been obtained if not in every case, in almost every case. The patent had been obtained and had issued to the original entryman who had issued final final receipt, and not having had any litigation

at the instance of the government or otherwise attacking such transactions it was naturally thought that after the issuance of the patent it was all a closed book. It was the lawyers' opinion in such cases.

#### Recross-Examination.

By Mr. Mills:

1. The answer that you have just made, that you account for your failure to advise them as to past transactions because you think patents had issued—is that answer based on knowledge or simply opinion or thought on your part?

That was the only way I could account for it; as to the past transactions we were not asked about them.

2. Did you make any investigation as to whether patent had issued in past transactions?

No, we did not make any investigation of our own.

3. Then, if you are asked as to whether or not in cases of purchase upon simple receiver's receipt prior to this investigation patents had issued at the time that you heard of these investigations you would have to answer "I don't know"? Is that correct?

Yes, sir; I would so have to answer. Although  
128 when patents came in they would be reported to us.

I would say "I don't know" as to each case; I could not say positively.

4. Then, I understand from your answers, Mr. Moss, that it was the custom of your firm, which was employed by the Wright-Blodgett Company to pass upon the matters of titles, to base your opinion upon the attitude of the bar and to whether or not any suits had been brought or any investigation made by the government rather than by the investigation of the law. Is that correct?

No, not exactly. We thought that when an entryman held his final receipt that he was entitled to the patent. That was our opinion at that time.

5. That was a mere independent matter of opinion, clean from the general attitude of the bar, or was it based on a thorough investigation of the law by you?

It was based upon reading of the law, but not a close study into the homestead law and the requirements in different jurisdictions in such matters. We had approved in the past a great

many titles on issuance of final receipt and all had stood, and so we based our knowledge on our past experience and our general knowledge of the law, and we thought we could approve the law on issuance of final receipt.

129           Testimony of MR. MOSS, witness in behalf of defendant, in Bryers case—No. 380.

### Direct Examination.

By Mr. Monroe :

1. I hand you abstract to which is annexed what purports to be the opinion of Pugo & Moss, marked "W-B Co. 5" and ask that you examine same and stated whether it includes the north half of northeast quarter of Section 34, Township 3 North, Range 5 West ?

A. Yes, sir; this abstract covers that property.

(Objected to by government on the ground that it is secondary evidence and that the document itself is the best evidence of what it contains.)

Q. Will you examine the apparent opinion of Messrs. Pugo & Moss annexed there to and state if that is a genuine opinion of those gentlemen ?

A. Yes, sir; the opinion covers the same tract. This opinion is written by myself.

3. As far as you can recall was the custom heretofore described by you of the Wright-Blodgett Company of submitting titles before purchase and submitting completed abstract and deed to the Wright-Blodgett Co. to you after purchase observed in this case ?

A. Yes, sir; as far as I know.

(In connection with testimony of witness counsel for defendant offers document marked "W-B Co. 5" subject to right to withdraw same for use in Aiken, Jr., case.)

(The admission of this abstract and opinion is objected to by the government on the grounds that it is part of the books and records of the company and is not admissible in evidence in its own behalf.)

4. Mr. Moss, how many titles all told did you examine for the Wright-Blodgett Company?

I could not tell you; a great number.

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Cross-Examination.

By Mr. Mills:

1. You know of your own knowledge in this case whether or not this title was submitted to you and the opinion given before the land was purchased?

A. I cannot swear that we had a separate abstract on this particular title that was submitted before this one was. I can only state as to the rule in regard thereto.

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J. J. HICKS, witness in behalf of complainant,  
being duly sworn, testified as follows:

(The following testimony is to be used on the question of good or bad faith in all the cases in which Wright-Blodgett Company is defendant—this being dictated by counsel for government, but being strenuously objected to by counsel for defendant.)

Direct Examination.

By Mr. Mills:

1. Mr. Hicks, where do you live?

A. At Leesville, in Vernon Parish.

2. How long have you lived there?

A. I moved to Leesville the 3rd day of July, 1899.

3. Did you make a homestead of any lands in Vernon Parish?

A. Yes, sir.

4. How many?

A. One.

5. When did you make that entry?

A. I don't know exactly.

6. Do you remember about when?

A. I think in 1899. It was in the fall after I moved to Leesville in the summer, I think.

7. Do you remember the description of the land you homesteaded and the numbers?

A. No, I do not. I believe it was of Section 8, either the southeast or northeast quarter.

8. Section 8? And what township?

A. 2 North, Range 5, I think.

9. How did you come to make this entry, Mr. Hicks?

A. I did it of my own volition, for a homestead.

10. When did you first learn that this land was vacant?

A. Only a short time before I made the entry.

11. Through whom did you learn that this land was vacant?

A. Through J. M. Boyd.

132 12. Where was Mr. Boyd living at that time?

A. In Vernon Parish, about Cora Postoffice.

13. Do you know what was his occupation?

A. U. S. commissioner.

14. Do you know whether he did any other work at that time, or not?

A. No, sir; I do not know.

15. You learned through Mr. Boyd that this land, Sec. 8, T. 2, R. 5, was vacant?

A. Yes, sir. I asked him to look up a vacant homestead.

16. Did you make the entry at the land office?

A. Before the clerk of court at Leesville?

17. What steps did you make to perfect that entry?

A. After making the entry within a short time I hired the improvements put on it—had houses built, rails split and about two acres of land cleared.

18. Who did you hire to do this?

A. I hired Mr. Laerence. I don't remember but that Mr. Bass assisted him.

19. When did you move upon this land to take up your residence?

A. My first visit to the land after the houses were completed must have been sixty days, maybe ninety days, I don't remember, but it was only a short length of time.

20. Did you maintain a residence anywhere else?

A. My home was in Leesville.

21. Were you a married man?

A. Yes, sir.

22. Had a family?

A. Yes, sir.

23. Where did your family live?

A. Leesville.

24. Where was your actual residence during the time of this homestead?

A. Leesville.

25. How often, if at all, did you go upon this homestead?

A. Once about every four months to the best of my recollection.

26. You would visit the land once every four months?

A. Yes, sir.

27. Would you stay any length of time?

A. Spent the night.

28. That was the extent of your residence on this land?

A. Yes, sir.

29. How was this house furnished that you had on the land?

A. I don't remember so long; not much; a chair or two, and a bedstead.

30. Any cooking stove?

A. No, sir. What cooking we did was in a fireplace—old style.

31. What crop did you raise on this land?

A. I raised one crop.

32. Did you raise it yourself or hire it raised?

A. Hired it done. Raised corn and some peas with the corn; also had some fruit trees, probably half a dozen or more.

33. Was the crop ever cultivated?

A. I don't know about that. Mr. Allen, my brother-in-law, who had a homestead adjoining this, looked after that part of it.

34. Do you know of your own experience whether this crop was ever harvested?

A. I do not.

35. How many seasons was this land cultivated?

A. One.

36. Did you ever prove this entry in any way? Ever take out any final papers?

A. Yes, sir; commutation homestead proof.

37. In making this commutation homestead proof do you remember the time you made it? The date?

A. In 1901, I believe.

38. You are not positive about the date?

A. No, sir.

39. In making this commutation of your entry  
134 was it necessary to pay any sums of money to the  
government?

A. Yes, sir.

40. How much?

A. Right around \$400.00 for each entry.

41. Where did you get the money?

For emphasis the objection is here made that this testimony is irrelevant, as it does not tend to prove or disprove any fact or allegation set forth by the pleadings at issue in this case.

A. Mr. Dickens, who was in the employ at that time of the Wright-Blodgett Co., visited Leesville frequently and a short time before the fourteen months' period had expired he asked me something about the homestead, and I told him "Yes, I have a homestead," and he asked me then—

(Objection here made by defendant on account of hearsay.)

(Counsel for complainant asserts that by testimony heretofore given in this case it has been shown that Thos. B. Dickens was the agent and employe of the Wright-Blodgett Co., and that, therefore, this statement is directly applicable to the issues involved in these suits.)

what I was going to do with the land. I told him I guess I would sell it after I made my proof. The question then came up as to the commutation money and Mr. Dickens remarked, "I will loan you the money." I told him "all right" and after I had received my final receipt Mr. Dickens came to Leesville and made me an offer on the land, which I accepted.

42. In compliance with his promise of Mr. Dickens, did he ever loan you or advance you any money?

(Objected to on grounds of irrelevancy.)

A. Yes, sir.

43. State the circumstances, amounts, etc.

135 A. Well, three or four days, as well as I remember, before the day for making the proof I wrote Mr. Dickens that I would need about \$200.00. He sent me check for that amount. Upon forwarding the proof together with



that amount of money to the land office at Natchitoches I was advised by the officials that the land was situated out of the \$1.25 limit and that I would be required to pay \$2.50 per acre, and to the best of my recollection I mailed Mr. Dickens the letter that I had received from the land office and he mailed me check to cover the balance.

44. Where did you address Mr. Dickens?

(For the purpose of emphasis the objection of irrelevancy is again urged against this testimony with the suggestion that the bills in this case set up for grounds of attack upon the patent merely failure to live upon the lands, and make improvements, and that the alleged statements of Mr. Hicks, and Mr. Dickens pertain to questions not raised by the pleadings and are hence irrelevant.)

(Counsel for complainant asserts the materiality of this testimony upon the issue joined by the bill and answer as to the good and faith on the part of the Wright-Blodgett Company, and is offered for the purpose of showing guilty knowledge upon the part of Wright Blodgett Company at the time of and prior to the purchase of these lands through its agent, Dickens, and through its agents, Kelly and Wazey.)

A. Lake Charles.

45. Do you know for whom Mr. Dickens worked at that time?

(Objected to unless witness knows of his own knowledge.)

A. I know from hearsay.

46. From his own statement?

A. I only know by this: I was clerk of court and  
136 Mr. Dickens visited my office frequently, looking  
after matters pertaining to deeds conveying lands to  
Wright-Blodgett Company.

47. Did Mr. Dickens state to you whether or not he was furnishing you this money for commutation of land personally or for someone else?

A. I do not know.

48. After the commutation of this land did you receive any final receipt or receiver's receipt?

A. Yes, sir.

49. Did you ever make a sale of this land?

A. Yes, sir.

50. To whom?

A. Wright-Blodgett Co.

51. Examine this and see if it, to the best of your knowledge and belief, a correct copy of the act of transfer?

A. I could not say. I believe it was on a printed form.

52. Is this a correct copy?

A. Yes, sir; I am sure—in fact, I know—it is the deed of 1901.

53. You sold the land to Wright-Blodgett Company?

A. Yes, sir.

54. Who represented Wright-Blodgett Co. in the making of this sale?

A. Mr. Dickens.

55. This deed recites that it is made for a consideration of \$800.00. Was that amount paid you for the land?

A. Yes, sir.

56. Was it paid in cash?

A. Yes, sir.

57. State whether or not it is a fact that upon the making of this sale you were paid \$800.00 in cash, or \$800.00 less the amount already advanced you for commutation?

A. I was paid the amount less the checks sent me before.

58. Then the money advanced you by Dickens for commutation of this land was applied when the land was sold Wright-Blodgett Co. as part of the purchase price?

A. I believe it was.

137 59. Don't you know?

A. Yes, I know it was by their deduction.

60. Did Mr. Dickens at any time before the commutation or after or before the sale or after make any inquiries of you as to what extent you had complied with homestead laws regarding this land?

A. No, sir.

61. How often did Mr. Dickens come to Leesville?

A. He was there quite frequently. I don't remember. Sometimes sixty or ninety days; at other times once a month.

62. You were living openly with your family at Leesville?

A. Yes, sir.

63. Was Mr. Dickens ever at your home?

A. Yes, sir.

64. Do you know from statements made by him whether or not he was aware that you were living at Leesville?

A. He must have known.

65. You were clerk of court at the time?

A. I was.

66. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see if it was probably settled, or lived upon, or the homestead laws were complied with?

A. I do not know.

67. Do you know Nat Wazey?

A. Yes, sir; I did know him.

68. How long had you known Wazey at the time you commuted this land?

A. I think I met Mr. Wazey before I was elected clerk of court, about the time I began work for Mr. Winfree, in 1899.

69. Did you ever have any talks with Mr. Wazey regarding this land?

A. No, sir.

70. What was Mr. Wazey's occupation?

A. I didn't know; I heard afterwards. Everybody seemed to know he was buying land for Wright-Blodgett Co.

(Objected to on the ground of irrelevancy and on the ground that it hearsay of the rankest character.)

71. Do you know where Nat Wazey lived?

138 A. No, sir; I cannot way [say] that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Wazey's activity and occupation for the Wright-Blodgett Co. was?

A. Well, principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory, I think. That is, where he bought the principal part of land.

74. Mr. Hicks, during the life of your entry before the sale of the land to Wright-Blodgett Co. was, or not, Nat Wazey frequently in the clerk's office at Leesville?

A. Up to that time, not very often.

75. Was he there occasionally?

A. Yes, sir.

(Objected to as leading.)

76. Was Wazey ever at your house?

A. No, sir.

77. Do you know from his acts or words that he was aware of your living there?

A. I do not.

78. Do you know whether he was aware that you were clerk of court at Leesville at the time he would file deeds and papers with you?

A. Yes, sir.

79. How far was this homestead of yours from Leesville?

A. In the neighborhood of 20 miles. About 20 or 25 miles.

80. Any railroad connecting the places?

A. No, sir.

81. Any trolley lines of any kind?

A. No, sir.

82. How long would it take you to make a trip from your homestead to Leesville?

A. About five hours.

83. By what method of travel?

A. Buggy.

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#### Cross-Examination.

By Mr. Monroe:

1. Mr. Hicks, I understand that on your homestead there was a good house with furniture and bedding and a fireplace?

A. There was no bedding, but furniture and a fireplace.

2. Was there a bedstead in it?

A. Yes, sir.

3. If I understand correctly, this house was known as a double-pen house and was built directly on the line between your homestead and W. O. Allen's homestead?

A. Yes, sir.

4. W. O. Allen lived in part of that house during the life of the entry?

A. Yes, sir.

5. W. O. Allen's is your brother-in-law?

A. Yes, sir.

6. During that time there was a certain acreage of land fenced in and cultivated?

A. Yes, sir.

7. I suppose you had a well and a hog pen?

A. Yes, sir. We got good water from the spring.

8. Good water in the neighborhood?

A. Yes, sir.

9. Had you any outbuildings; any corn crib?

A. I did not. Mr. Allen had a corn crib.

10. What family did he have?

A. Wife and one child.

11. You went out every once in awhile and stayed several days—a week?

A. Well, one day and night was all the time I had to spend there.

12. I think Mr. Winfree said you had stayed there two weeks. Is he correct?

A. I had frequently spent two weeks looking after matter pertaining to my stock, cattle, and matters of that kind and during the time I would visit my homestead.

13. And these cattle were around on this acreage?

A. Yes, sir; in the cattle range.

14. During the life of your homestead your fences and house were kept in order?

A. Yes, sir.

15. I suppose Mr. Allen and his family kept your part looking habitable and clean so that you would find a clean place to sleep?

A. Mr. Allen looked after my part of it while he was there.

16. You say you made 18-mile ride day before yesterday in 2-1/2 hours?

A. Yes, sir.

17. Now, between friends, Mr. Hicks, don't you think you were laying it on thick when you said it took you five hours to drive twenty miles to your homestead?

A. It frequently took me all day. I had friends on the road where I would stop and lose time.

18. You were in politics in that part of the parish at the

time and in making these political pilgrimages it would frequently take five hours or longer, I suppose?

A. Yes, sir.

19. But at a good, hard drive how long?

A. Four hours in a single rig. If I was going after a doctor in Leesville I could make it in 2-1/2 or 3 hours. Four miles an hour was a good, average gait for that country.

20. Mr. Hicks, one thing I want to straighten out. The government has alleged that your entry dated Oct. 9, 1898. I understood on your direct examination that you said you thought it was in 1899. Did you speak from recollection?

A. Yes, sir. I would not be positive about it. It was after I moved to Leesville. I might have moved there in 1898 instead of 1899. The records will show.

21. When did you first know Mr. Dickens?

A. I knew him after I was elected.

22. Clerk of court?

A. Yes, sir; in 1900.

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Re-examination.

By Mr. Elstner:

1. Do you know how long Mr. W. O. Allen resided with his family on the homestead entry?

A. Mr. Allen moved from Leesville with his family with the intention of moving directly on his homestead, but after reaching my mother's his wife's health failed and he was in bad health, too, and he occupied a house about three miles from his homestead on account of being near a doctor; but he worked the land on his homestead and visited it frequently.

2. To your own knowledge did he, with his family, reside upon his homestead at all?

A. No, sir.

3. How much of that land did Mr. Allen cultivate?

A. About two acres. That is, about four acres all told; about two acres on his part.

4. How many crops did he raise?

A. Only one, I am pretty sure.

5. You know of what that crop consisted?

A. I do not.

6. Do you know whether it was cultivated or not?

A. No, sir.

7. Mr. Hicks, was the crop either on your place or on the place of Mr. Allen cultivated in a manner in which a farmer usually cultivates his crop?

A. Well, about an average for that part of the country. I hired mine cultivated. Had a two-bit pony and a two-bit plow.

8. And you raised about a two-bit crop?

A. Yes, sir; a few barrels of corn, but I don't remember just how much. Mr. Allen looked after it.

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## Recross-Examination.

By Mr. Monroe:

1. Did I understand your testimony to be that Mr. Allen had not lived in the house there at all?

2. He did not live there with his family. He only visited it, but was there a great many times.

2. Did he sleep on the place frequently?

A. Yes, sir. Every time I was there, and I think I heard him say he stopped over there between the times we were together.

3. Then, as I understand your testimony, Mr. Allen would stop and reside there as much as his wife's health would permit him.

A. She never spent the night there.

4. During his absence at night at that place his wife was sick some distance away?

A. Yes, sir. He left Leesville with the intention of staying there, but had to stop on account of his wife.

5. But he stayed there and slept there at all times except when his wife's condition required him to be with her?

A. No, he did not do that.

6. What did he do?

A. As I before stated, on account of his wife's illness and he, himself, being in bad health, he did not move into this house on the homestead as he had intended doing; but he was with me every night I stayed there and slept in his end of the house. And I have understood from him that he was there at times between the times we were together there.

7. Mr. Hicks, had you or Mr. Allen any reason to believe that you had not complied with the law in regard to homesteading?

(Objected to because that is a conclusion of law to be drawn by the Court from the facts in the case and it is not competent for the witness to state his opinion about it.)

143 (Mr. Monroe:

"Mr. Examiner, I will ask that you instruct this witness that counsel for government has the privilege of making what objections he sees fit, but that he, the witness, is to make his answers just as if no objection of any kind had been made.")

(On request from counsel for defendant the Master instructed the witness as follows: "I instruct Mr. Hicks to answer the questions as asked by counsel for defendant, as if no objection had been made.")

A. At the time we made our homestead proofs we were of the opinion that proofs were all right, as it was customary for the answers to go into the proof that claimant had not been absent six months at any one time. We did not know but what the proofs were all right until the matter was presented to the Court.

8. You honestly thought they were all right and acted in perfectly good faith?

A. Yes, sir.

9. Have you had any talk with any government official or agent relative to this case?

A. Well, very little. I talked with Mr. Elstner some in a general way.

10. Did you give a written confession of judgment against you in this Hicks case?

A. I did.

11. Did you give that on any terms or conditions?

A. No, sir; nothing more than my understanding that this would possibly end the case.

12. Was it your understanding that there would be no effort toward prosecution by the United States?

A. Yes, sir; that the patents would likely be canceled and that the Wright-Blodgett Co. would have the privilege to lay script on this land or take it up any other way they might see fit.



13. And it was with that understanding on your part that this written confession of judgment was signed by you?

A. Yes, sir.

144 14. Now, Mr. Hicks, you are a man of considerable standing in your community and have been elected to various public offices, have you not?

A. Yes, sir.

15. No one in that community had any reason to suppose that at the time you were making your commutation proofs during 1901 that you, by word or deed, would affix your signature to any statement that was not thoroughly correct in every respect?

A. No, sir.

16. Your character in the community had been without stain of any kind?

A. Yes, sir.

(It is admitted that Mr. Hicks was a man of unquestioned good standing in the community so far as is known to the U. S. attorney or his assistant, and that there has never been any other charge of any character whatever brought to the attention of the U. S. attorney except in the matter referred to in the examination of this witness by the counsel for the defendant.)

#### Redirect Examination.

By Mr. Elstner:

1. Mr. Hicks, did you ever at any time have any understanding with me as U. S. attorney that the Wright-Blodgett Co. would have any privilege growing out of this transaction locating the lands involved either in your homestead or the homestead of Mr. Allen except as would accrue to the right of any American citizen when those lands should be, if they were, returned to the public domain?

(Objected to as leading.)

A. I thought I had covered that point already. It was my own conclusion. I naturally knew that they would, of course, protect themselves.

2. You have known me for a long time, have you not?

A. Yes, sir.

145 3. You were a witness before the Federal Court at Alexandria in regard to the number of perjury cases growing out of land transactions?

A. Yes, sir.

4. Without putting you upon the stand or putting you under any oath, have I not accepted your statements to me as an individual without question?

A. Yes, sir.

5. Did you not state to me, as a matter of fact, that neither you nor Mr. Walter O. Allen were sworn at the time of making commutation proof in the cases of Hicks and Allen?

A. Yes, sir.

6. Did you not know, as a matter of fact, that along about the time of assigning this consent pro confesso that you were not to be prosecuted in this case?

A. Well, I don't remember, Mr. Elstner, any direct statement to me, but reading between the lines I supposed there would be no prosecution.

7. Were you not aware of the fact that you had not been sworn and that I, as U. S. attorney, was aware of that fact?

A. Yes, sir; I was aware of the fact that I was not sworn. I did not know that you knew it.

8. You had no reason to believe that I discredited your assertion that you had not been sworn?

A. No, sir.

9. You know that the proof in the cases of J. J. Hicks and W. O. Allen were both made before J. M. Boyd?

A. They were.

10. Do you know Mr. Boyd?

A. Yes, sir.

11. Do you know that it is currently reported and has been asserted by Mr. Boyd that he never swore any witness; that he did not think it necessary; that it was merely a matter of form?

A. Yes, sir.

146 12. Were you present at the Court at Alexandria when J. M. Boyd, U. S. commissioner, was called as a witness to prove the administration of an oath by him as such official to the homesteader and his witnesses in the case of commutation proof and heard him state under oath

that he regarded this proof as a mere matter of form and never inquired the parties to be sworn?

A. I was.

(It is conceded on the part of the government that these commutation proofs bore the certification of the several officers before they were taken that the oath was administered.)

147      TESTIMONY OF WALTER O. ALLEN, WITNESS IN BEHALF OF COMPLAINANT.

Direct Examination.

By Mr. Mills:

1. Where do you live?
- A. Leesville, Vernon Parish.
2. How long have you lived there?
- A. Since 1889.
3. Do you know Joe J. Hicks?
- A. Yes, sir.
4. How long have you known him?
- A. Twelve or fourteen years.
5. Are you related to him?
- A. By marriage; he is my brother-in-law.
6. Do you know where Mr. Hicks was living during summer and fall of '98?
- A. In Leesville.
7. Was Mr. Hicks married at that time?
- A. Yes, sir.
8. Did he have a family?
- A. Yes, sir.
9. How large?
- A. Four children.
10. Did his family live with him at Leesville?
- A. Yes, sir.
11. From that time on how long did he continue to live there?
- A. Up to the present time.
12. Has he ever resided anywhere else that you know of?
- A. No, sir; not that I know of.
13. Do you know of your own knowledge whether or not

any time in 1898 or 1899 Mr. Hicks made any homestead entry in Vernon Parish?

A. Yes, sir.

14. Do you know whether he made more than one?

A. Only one homestead.

15. Do you remember the description of that  
148 land?

A. Northeast quarter Section (I don't remember the section); Township 2, Range 5 West.

16. Did you make any homestead entry yourself?

A. Yes, sir; adjoining that. The southeast quarter of same section. His was the northeast quarter.

17. Do you remember when your entry was made?

A. No, I don't remember now.

18. Did you and he make your entries together, or at the same time?

A. He made his a little before I did, I believe.

19. Do you remember when you made yours? Approximate the month and year.

A. Sometime in 1898, I believe; I don't remember exactly.

20. Do you remember what improvements Mr. Hicks put on his homestead?

A. He and I made a combination house—a double house—on the dividing line, one half of the house on each side.

21. What other improvements were made on his side, if any?

A. We made an entire enclosure of about two acres—that is, half on each side of the dividing line.

22. Did Mr. Hicks ever plant any crop that you know of?

A. Yes; some peas were planted on it.

23. Did he plant that lot of peas himself or hire it done?

A. I could not say now; I don't think he planted them.

24. Do you know whether this crop ever matured and was harvested or not?

A. It never matured to make enough for the seed that was put in the ground.

25. Was it cultivated in any way or any attention paid to it after planting?

A. Not to amount to anything.

26. How often did Mr. Hicks to your knowledge go from his home in Leesville to this land?

A. At intervals of three, four, five or six months.

27. Did he take his family with him on these trips?

A. I never saw any of his family there.

28. How long would he stay upon the land on  
149 the occasion of these periodical visits?

A. Twelve to thirty-six hours. Sometimes that included the entire time gone, coming and going.

29. Did you ever know Mr. Hicks to stay upon this land for any longer period than that?

A. No longer than twelve or fourteen hours that we would be together. He would stay overnight from about five in the evening until early next morning.

30. Then the only actual length of time that you ever knew Mr. Hicks to be on that land was a periodical visit every three, four, five or six months and he would then stay overnight?

(Objected to as leading.)

A. Yes, sir; and he would stay overnight.

#### Cross-Examination.

By Mr. Monroe:

1. You say you and Mr. Hicks had a double house? What is commonly called a double pen?

A. Yes, sir.

2. Any doors or windows?

A. Doors, but not the windows.

3. Was the enclosure actually fenced in?

A. Yes, sir.

4. Any outbuildings?

A. A stable.

5. Did you have any orchard trees planted?

A. Yes, sir.

6. What else did you have planted in the enclosure besides peas and trees?

A. A little corn at one time.

7. Were a few barrels of corn made in the enclosure?

A. A few barrels? I never saw it.

150 8. Mr. Hicks stated that there were a few barrels of corn made.

A. I didn't see any.

9. Mr. Hicks stated that you and your wife started out to

live in that double-pen house and that your wife was taken sick.

A. That is correct.

10. To what extent did you live in that double-pen house?

(Objected to by counsel for government on the ground that any residence by Mr. Allen on his homestead is irrelevant in this case.)

A. At about the same intervals as in Mr. Hicks' case—two or three or four months apart; I would stop over a night or a day.

11. Did you personally do any work in the field inside that enclosure?

A. I never did; that is, in the fields.

12. What work did you do there?

A. I planted the trees, built fences and outhouses.

13. Where were these outhouses; on your side or Mr. Hicks' side?

A. On my side of the line.

14. When you made your commutation proofs, Mr. Allen, at that time didn't you and Mr. Hicks verily believe that you had complied in all respects with the law?

(Objected to by government as to what Mr. Hicks believed on the ground that it could be only hearsay.)

A. Yes, sir; that is my impression. I don't know what Mr. Hicks thought.

15. Did any of your family or Mr. Hicks family remain for any length of time in that house besides you and Mr. Hicks?

A. My wife and child did.

16. How long did they stay?

A. One night and part of the next day, one time.

17. Where was the spring in that neighborhood?

A. A little branch ran through the adjoining forty on the west.

18. Was there a spring on Mr. Hicks' forty?

151 A. No, on the opposite side; on the north side.

19. If he testified that there was a spring there would you contradict it?

A. If there was it was in the north side of the forty. I was on the south side and it was a half mile away and I never went to it if there one there.

In this case counsel for government offers a copy of the records of the general land office of the Department of the Interior, showing the various papers filed and issued in the matter of the homestead entry of J. J. Hicks, #21,228, and rests his case.

In this case counsel for defendant offers the patent marked "W-B Co. P," and rests his case.

152 GREEN FOSHEE, witness in behalf of complainant, being duly sworn, testified as follows:

(Counsel for complainant asks that the testimony of Mr. Foshee be inserted in each of the nine cases.)

(Counsel for defendant objects on the ground of irrelevancy.)

(Mills:)

1. Where do you live?

A. Vernon Parish.

2. How long have you lived there?

A. Nearly all my life; a long time.

3. Near what towns do you live?

A. Pitkin.

4. How long have you lived at Pitkin?

A. For six or seven years' exception I have lived in the neighborhood of Pitkin ever since I was seven or eight years old.

5. Did you know Nat Wazey?

A. Yes, sir.

6. Did you know the Widow Graham?

A. Yes, sir.

7. Do you know of your own knowledge whether Nat Wazey ever bought any improvements on land from the Widow Graham?

A. Yes, sir.

8. When was that?

A. I could not say right positively; about 7 or 8 years ago to the best of my knowledge. I can't say what date.

9. Do you know where the Widow Graham lived at the time?

A. Yes, sir.

10. Where?

A. At the time he bought her improvements she was living on a creek that we called Ten-Mile.

11. What section?

A. I couldn't tell you what section.

12. Were you present when Wazey bought her  
153 out?

A. I was present when he made a contract with her to buy the property from her.

13. Did he make any statements at the time as to why he wanted to buy the improvements?

(Objected to as hearsay.)

A. I can't hardly say that I recollect.

14. Did he at any time ever tell you why he wanted those improvements?

(Objected to as hearsay.)

A. Yes, sir.

15. What did he tell you?

A. That he had homesteaded the place and he didn't want to take it away from her without paying her for it.

16. Then, from his statements you were led to believe that he had already made a homestead entry on the land before he bought her improvements?

(Objected as leading.)

A. I think he had; yes, sir.

17. After this purchase did the Widow Graham continue to live there or move off?

A. She moved off sometime after. I don't remember just how long. Some two or three months.

18. After she moved off of this land did anyone else move on that you know of?



A. No, sir.

19. At the time that Nat Waezy purchased these improvements from Mrs. Graham where was he living?

A. Well, I couldn't hardly tell you. He was a timber man and he was over the country in different places at that time.

20. Do you know where his home was at that time?

A. No, sir; I do not.

21. Do you know of any place in that country that he lived or had a home about that time or short time afterwards?

A. Afterwards I did.

22. How long afterwards?

154 A. I can't say positively, but to the best of my knowledge over 4 mos.

23. During the 4 months after purchasing these improvements from Mrs. Graham where was he living?

A. At that time he moved his family near a little place called Pitkin now.

24. What was it called then?

A. Weldon's place at that time.

25. How long did he live there?

A. I am unable to say.

26. Estimate it, please.

A. I don't think he stayed over two or three months.

27. How far was this place from the Widow Graham's?

A. I always called it 12 miles. I don't think it was quite that far.

28. Where did Waezy live after leaving Weldon's place?

A. He bought improvements from Dr. Stallsby on a place about 2 or 2-1/2 miles east of the place he was living at that time.

29. After buying this place did he move there and live there?

A. Yes, sir.

30. How long did he live there?

A. I can't say; I don't remember.

31. A day or a year?

A. A couple of years; maybe longer. He was there as long as I was in that section of the country.

32. Did you ever know him to live at any other place in that country except on the Weldon place and on this place he got from Stallsby?

A. No, sir. Of course, he was away from there half the

time because he was working for some other parties and he was at home very little himself, but his family was there most of the time.

33. How far was this place he bought from Stallsby from the property on which was located these improvements bought from Mrs. Graham?

A. It would have been eight or nine miles. We called the distance over the road, I couldn't say exactly.

34. Do you know of your own knowledge or from statements made by Wasey whether he ever made a homestead entry on this land on which were situated the improvements bought from Mrs. Graham?

A. Yes, sir; I think he did. He told me he did.

155 35. Do you know whether he ever commuted that entry or took any steps to prove it?

A. I did not at that particular time.

36. Do you now?

A. Yes, sir.

37. How do you know it now?

A. I know it now by showing that I was a witness and I was arrested for being a witness on that homestead.

38. Were you a witness on his final proving up and commutation of that land?

A. If I was I didn't know it.

39. Have you any recollection of being questioned by anyone as to the residence on or cultivation of this homestead of Nat Wasey's?

A. I have not.

40. Have you any recollection of taking any oath or signing any paper in regard to it?

A. I didn't take any oath, but I cannot say I did not sign any paper, because Nat would come to me quite often to sign papers for him.

41. And did you sign without reading them or knowing what they were?

A. Yes, sir; most of the time. I can't read much. I haven't much education. I signed all that I thought were land deeds. I ran a little store and he would bring parties there and ask me to sign paper and I didn't see any harm in it and would always sign the papers he asked me to sign.

42. What statements did he make to you about what these papers were and why he wanted you to sign them?

A. I signed a good many where he just opened the paper and said: "sign on this line," and I have heard other parties talk about deeds and heard agreements between them.

43. Did Mr. Wazey ever state to you or in your hearing whether or not he was having deeds made to himself or for other parties or firms?

(Objected to as hearsay.)

A. People he was working for.

44. Who was he working for? (Objected to as hearsay.)

A. Wright-Blodgett Company.

45. How do you know that?

A. Why, I know, or I think I do, because there were some of them in there and he always told me he was working for them, and I saw them all in there quite often.

46. Do you know Mr. Michael Kelly here?

A. Yes, sir.

47. Was he ever in your vicinity?

156 A. Yes, sir.

48. Was he there anywhere around the time of this Wazey homestead entry?

A. I think he was.

49. Do you know what Kelly was doing there in that vicinity?

A. They were took to be timber people.

50. Did you ever see Kelly with Waezy?

(Objected to as hearsay.)

A. Yes, sir.

51. Often?

A. I couldn't say anything about the times; several times.

52. When Mr. Kelly would go into that country with whom would he stay?

(Objected to as hearsay.)

A. Mr. Wazey.

53. How do you know that?

A. I have seen him there and have heard Wazey tell about his being there when I have not seen him.

(Objected to as hearsay.)

54. Did you ever sign any papers for Kelly?

A. I don't remember that I ever did. I wouldn't say that I did or didn't.

55. Was Mr. Kelly ever around when you signed deeds or papers for Wazey?

A. I can't undertake to answer that question.

56. When Mr. Kelly was in your vicinity did you ever see him going around or having any business dealings with anyone but Nat Wazey?

A. I don't think I can give a correct answer to that. I have seen Mr. Kelly, talking with other people, but whether it was on business or not I don't know that I could hardly be able to say.

57. Did you ever hear of any conversations in regard to land matters between Kelly and Wazey.

(Objected to as hearsay.)

A. I don't know that I ever did. I always thought that they seemed to be pretty particular in their way of doing business.

(Objected to as hearsay.)

58. Did you ever hear any conversations between them in regard to land matters?

A. I couldn't say positively. Mr. Kelly always  
157 seemed to be pretty particular about talking to anyone. I never heard him get out and express himself. I never heard him, while in his presence, talking about his business. He was always joking, or something like that.

59. Did you ever hear Nat Wazey make any statement or say anything in regard to what he intended to do with his homestead after proving it up?

A. No, sir.

(Stenographer's Note: It was just at this point in Mr. Foshee's testimony that Mr. Mills instructed me to insert his (Mr. Foshee's) testimony in all the cases, and Mr. Monroe objected on ground of irrelevancy. See page 1 of this testimony.)

## Cross-Examination.

By Mr. Monroe:

1. Do you know any relatives of Nat Wazey by the name of Clingo?

A. No, sir.

2. What brothers or sisters did he have at his death?

A. I don't know whether he left any sisters or not; he left a brother.

3. What is his name?

A. John.

4. Any other brother?

A. I think he had another; I don't know his name.

5. Is his mother living?

A. I don't know.

6. Is M. Waezy living?

A. I don't know.

7. Is George Wazey living?

A. I don't know him.

8. Do you know whether Nat Wazey bought more than one set of improvements from Mrs. Graham or not?

A. I don't know.

9. Do you know of your own knowledge?

A. If she had but one I don't know it.

10. You don't know whether she had or not?

A. No, sir; if she had but the one I don't know it.

11. Are you prepared to swear that you did not sign your name on the commutation proof of Mr. Wazey?

A. No, sir.

12. I hand you a copy of the Times-Democrat of Feb. 26th. Please read the headlines of the first column.

A. I don't know that I can.

13. Well, try it.

A. I can't read it good enough.

14. What is on the first line?

A. Why that is "Navy Yard Commission," or something like that.

15. Second line?

A. "President Appoints Men to Investigate Conditions," or something like that.

16. The next line?

A. "He Disregards and Defies Congress by This Act."

17. On the next line?

A. "Roosevelt Determines to Discontinue Southern Yards."

18. Will you take that sheet of paper and write your name and address on it the best you can?

A. Yes, sir. (Which he does.)

19. How do you spell "land"?

A. I am not very good on spelling, but I reckon l-a-n-d.

20. How do you spell "house"?

A. H-o-u-s-e.

21. Hoe dod [how do] you spell "improvements"?

A. I-m-p-r-o-v-e-m-e-n-t-s.

22. How do you spell "crop"?

A. C-r-o-p.

23. How do you spell "clear"?

A. C-l-e-a-r-e.

24. How do you spell "season"?

A. I don't know that I can spell it.

25. Try it.

A. S-e-a-s-e-n.

26. How do you spell "resience"?

A. R-e-s-i-d-e-n-c-e.

27. How do you spell "cultivated"?

A. C-u-l-t-i-v-a-t.

28. Mr. Foshee, can you swear positively to it as a fact that you ever saw Mr. Kelly in your neighborhood between Feb. 9, 1900, and May 14, 1901?

A. No, sir; I cannot remember what dates he was there. I saw him several times, but I cannot say what dates.

29. Can you swear positively to it as a fact where Nat Wazey was living between Feb. 9, 1900, and May 14, 1901?

A. As to the times, I cannot tell you just exactly what date. I cannot remember dates. As I have stated, Mr. Wazey was all over the country and I cannot say where he was lots of the time.

160 ED DYAL, witness in behalf of complainant, being  
duly sworn, testified as follows:

(Mills:)

1. Where do you live, Ed?
- A. Elizabeth, on the Santa Fe Railroad.
2. What parish?
- A. Calcasieu.
3. In Louisiana?
- A. Yes, sir.
3. How long have you lived there?
- A. About a year.
5. Where did you live before that?
- A. In Rapides Parish, about ten miles north of Elizabeth.
6. How long did you live there?
- A. Around the place about ten years. I was born and raised there; not over three or four miles from there.
7. How far is that from Brushy Creek?
- A. About eight miles.
8. What do you do in that country?
- A. Mostly farming. I've been working for the Industrial Co. as laborer the last two years.
9. Did you ever know Nat Wazey?
- A. Yes, sir.
10. How long ago did you first become acquainted with him?
- A. I don't remember. It has been quite a little while. About seven or eight years ago; maybe longer. I know it's been that long.
11. How long had he been in that country before you met him?
- A. I don't remember; I don't think he had been there long.
13. Where was he living at the time you met him?
- A. I think he was there a right smart little while before he moved his family there and was staying about and I met him several times, but the first place I knew him to live was on Brushy Creek near Pitkin.
13. Were you ever on his place there?
- A. Yes sir.
14. Did he have a home there?
- A. Yes, sir; I suppose so.

15. You saw it?

A. Yes, sir.

16. Then you know it?

A. Yes, sir; I seen him and his family living there, claimin' it to be his home.

17. How long did he live there to your knowledge?

A. Something like two year.

18. Do you know whether or not Nat Wazey ever made a homestead entry in that country?

A. No, sir; I don't know any more than he told me he did.

19. Did he tell you where it was?

A. Yes, sir; on the Widow Graham's place; that was his homestead.

20. Do you know he made that entry?

A. No, sir.

21. Do you know whether he ever commuted it?

A. No, sir.

22. Did he ever come to you and ask that you be one of the witnesses?

A. No, sir.

23. Did he ever come to you and state that he was about to prove up his entry and was about to commute it?

A. No, sir; not that I recollect.

24. Ever come to you with any paper and tell you that this paper was to be used in proof upon his commuting his homestead entry and that he wanted you to sign it as a witness?

(Objected to as leading.)

A. If he did I don't remember it.

25. Did you ever sign any paper at all at his request?

A. I might have, but if I did I don't remember it. I ain't got any education at all and I can't sign my name, but probably I have signed papers for him.

26. How could you sign papers if you cannot sign your name?

A. Whenever I sign a paper someone else signs it and I touch the pen.

27. Ed, do you know this gentleman sitting here?

162 A. Yes, sir; I think I do. I think I have been informed his name is Mr. Kelly.



28. Did you ever see Mr. Kelly in the vicinity of Nat Wazey's homestead at Brushy Creek?

A. I don't remember that I have, but it seems I have met him betwixt where Mr. Wazey lived and Glenmora in a hack. I am not positive.

29. Anybody else in the hack with him?

A. If it was I don't remember.

30. Did you ever see Mr. Kelly in that vicinity or country on any other occasion?

A. No, sir; I don't think I have.

(At this point counsel for government asks that this testimony be added to the testimony in all the cases.)

(Subject to the right of counsel for defendant to object to it, and for other causes.)

#### Cross-Examination.

By Mr. Monroe:

1. Can you swear positively of your own knowledge that you did not sign Nat Wazey's commutation proof?

A. Yes, sir; if I did I don't know anything about it.

2. You don't know or don't remember?

A. If I signed it I didn't know what I was signing.

3. Have you had any conversation with any official of the government relative to your testimony here?

A. Yes, sir; I don't suppose that I have except with this gentleman.

4. No one else but Mr. Mills?

A. Yes, sir; I have with Mr. Elstner.

5. Did you ever speak to Mr. Goleman about it?

A. No, sir.

6. You never spoke to any government inspector out in that country?

A. No, sir.

7. Any U. S. commissioner?

A. I could have talked with some of those men and not have known it, but not to know it.

8. Aren't you testifying here under the understanding that if you do give your testimony here there will be no prosecution against you?

A. No, sir; it is not.

9. No intimation of that kind made to you?

A. No, sir.

10. Ed. have you ever been arrested?

163 A. Yes, sir.

11. For what?

A. I was arrested on the charge of being a witness on the Wazey homestead.

12. What happened to that case?

A. I don't know; I gave bond and was put in jail.

13. You was charged with perjury?

A. I don't know what I was charged with.

14. At the time you gave bond did you have any talk with any government official about testifying in that case?

A. If I did I don't remember it.

15. Was it intimated to you that if you would testify in that case that the charge against you would be dropped?

A. No, sir.

16. Was that ever been intimated to you or told to you at any time?

A. I don't think it has.

17. Have you ever been arrested at any other time?

A. No, sir.

18. Do you mean to tell me, Ed Dyal, that you have never been in the penitentiary for the killing of Sam Buxton?

(Objected to on the ground that it is entirely irrelevant and has no tendency to prove or disprove any of the issues in this case.)

(Counsel for defendant suggested that it might have some bearing on the credibility of the witness.)

A. No, sir; not for the killing of Sam Buxton. I thought you meant had I been arrested since that arrest of this land proof. I have been arrested more than twice. I was put in the penitentiary; there was some people's sheep was killed and put in the creek above where me and my father lived and I was put in the penitentiary for that, and I had been arrested for the killing of Sam Buxton, too.)

19. How long a time did you serve in the penitentiary?

A. Nine months.

20. In what year was that?

A. I don't remember; couldn't tell you how long it has been.

21. Was that the only time you have ever been in jail?

A. No, sir; I have been in jail before I was sentenced for the sheep. The first time I was ever in jail was for the killing of Buxton.

22. You were indicted and convicted?

A. I was not convicted. There was a warrant  
164 sworn out and I was arrested and put in jail.

23. What was ever done in connection with that matter?

A. The case was nolleprossed and put out. Pretty certain they never had any trial.

24. You don't know positively whether you were tried and convicted?

A. No, sir; not convicted.

25. What about Pink Buxton?

A. I was only jailed for that. Just accused of being an accessory in the killing.

26. Have you ever been in jail besides the times you have mentioned?

A. No, sir; I don't think I have.

27. Have you ever been arrested besides those times?

A. No, sir; I don't think so.

28. Do you mean you have been in jail so many times you cannot remember how many?

A. I think I have been in mail [jail] five or six times, but all on those cases.

29. Have you ever been indicted for perjury?

A. If I have I don't know it.

30. You cannot swear you have not?

A. No, sir; I cannot.

#### Re-examination.

Mr. Mills:

1. How long prior to the time Nat Wazey came into the country was it that you had this trouble with the killing of Buxtons?

A. I don't remember how long, but it must have been something like seven or eight years.

2. How long prior to the time he came into the country

was it that you were in the penitentiary on account of these sheep?

A. Must have been about—well, anyways six or seven years; something like that. I can't keep up with the dates.

3. Where were you when you were arrested on these charges?

A. In the same neighborhood.

4. These facts are generally known in all that community?

A. Yes, sir.

#### Recross-Examination.

Mr. Monroe:

1. You remember the yellow fever of 1898?

A. No, sir; I don't remember it.

2. Have you any way of fixing when you were in  
165 the penitentiary?

A. No, sir; I don't know that I have.

3. How old are you?

A. About 35 or 36 years old.

4. How old were you when you were sent to the penitentiary?

A. I couldn't tell you.

5. You were a grown man?

A. I was just about grown.

6. You had voted already?

A. No, sir; if I had ever voted I don't know it.

7. Over twenty-one?

A. No, sir; I couldn't have been over twenty-one, but  
somewheres along there.

8. Was the time you were in the penitentiary before the killing of Buxton or afterwards?

A. Afterwards.

THOS. C. WINGATE, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Where did you live in March, 1901?

A. In the Town of Leesville, Vernon Parish, La.

2. What was you [your] occupation?

A. At that time I was dealing in timber land principally; buying and selling timber and estimating land.

3. Were you working for any particular company?

A. I could not say that I was. I bought some land for several different companies, but I cannot recall to memory whether I was employed steadily by any one firm.

4. Did you buy and [any] land about that time for the Wright-Blodgett Co.?

A. Well, I bought some for them. I closed up some trades for them, but I cannot say whether it was just in March, 1901, or not. We had so many transactions with people at that time that I cannot tell whether it was in March, 1901, or March, 1900, or March, 1899.

5. Do you remember the first time you ever did any work for W-B. Co.?

A. I can't say that I remember unless I could see the deeds or papers or something to refresh my memory; I could not state positively just when I did the first work for them.

6. In about how many different transactions were you employed by them?

A. I couldn't tell you?

7. Many or few?

A. Very few.

8. What was the nature of these transactions you managed for them? Explain fully as to your dealings, if you were paid for them, by whom and how much.

A. Most of the transactions with the company were in this way; parties would come and want to sell certain land to me. I would not have any money to buy it, and I would know it was lying the Wright-Blodgett territory and I would write Mr. Kelly and tell him the description of the land and who offered it and he would write to me and state if he would want to take it and he would give me instructions sometimes to close the trade out on certain pieces of land. He would pay me my commission.

9. Then in all the transactions you had for the company you simply acted as middle man and referred all matters for definite decision to Mr. Kelly?

A. That is correct. I had no authority to cruise the timber or anything of that sort. I would submit the matter to him and he would notify me if he wanted to purchase the property.

10. Do you know of anyone else in that town or  
167 community who was employed by the Wright  
Blodgett Co. in any capacity?

A. Well, I don't know. I think Mr. Boyd and Mr. Wasey and Mr. Dickens.

11. What Boyd was that?

A. Jas. M. Boyd.

12. What made you think that Jas. M. Boyd was employed by Wright-Blodgett Co.?

A. I don't think that at that time he ever told me he was employed for the company, but he has frequently told me in the last few years about doing certain things for Mr. Kelly—go and meet him on business somewhere, and I suppose it was on land matters.

13. Was Boyd also U. S. Commissioner there at that time?

A. I don't know whether he was at that time or not, and I don't know even the date when he was commissioner. I know, however, that he was U. S. commissioner at one time?

14. Examine this copy of deed from Jas. D. Stallsby to Wright-Blodgett Co., dated March 26, 1901, and state if that was one of the transactions in which you represented the Wright-Blodgett Co.?

A. I suppose I must have closed this transaction.

15. Does not your name appear on this deed as witness?

A. It does.

16. What name also appears on that deed?

A. Jas. M. Boyd.

17. The party you have been speaking about?

A. Yes, sir; it is.

18. Have you any recollection of how the consideration was paid in this case?

A. No, sir, I can not and could not unless I could see the original deed. The reason why I stated a moment ago that I must have closed up this transaction was for the reason that only this morning Mr. Stallsby told me that he sold this land

through me to the Wright-Blodgett Co. I had entirely forgotten the transaction.

19. Mr. Wingate, did you ever in this case, or any other case, buy lands outright for yourself, and then turn around and sell them to the Wright-Blodgett Co., or were deeds made direct to the Wright-Blodgett Co., and paid for by them?

A. I am sure that I sold Wright-Blodgett Co. some pieces of land that I acquired in my own name and with my own funds.

20. If the papers in this case show that this piece of property transferred from Mr. Hester to Mr. Stallsby to the Wright-Blodgett Co., could you state whether or not you paid for these lands with your own funds or not?

(Objected to as leading.)

A. I have no recollection of paying Mr. Hester nor Stallsby for this tract of land with my own funds.

21. If you did advance the money to Mr. Stalls-  
168 by to pay for this tract of land, do you know whether or not you were reimbursed by Wright-Blodgett Co.?

(Objected to as leading, calling for the opinion of the witness and suggestive of the answer.)

A. I think I can answer that positively because the Wright-Blodgett does not owe me a cent, and if I ever was advanced anything on their account they reimbursed me.

22. State whether or not it was your custom in these matters after you had been notified by Kelly and authorized to go ahead and make the trade for the company, did you not on some occasions advance the money or give your personal check for the payment of these lands and afterwards be reimbursed by the Wright-Blodgett Company?

(Objected to as irrelevant.)

A. I generally had authority from Mr. Kelly to make draft on him through the bank to pay for the few purchases I made for him. I may have, on some few occasions, put up the money myself and afterwards Mr. Kelly would reimburse me.

23. Mr. Wingate, did you ever purchase for your own use

and benefit the property described in this deed from Stallsby to Wright-Blodgett Co.?

A. I did not.

24. Did you know Nat Wasey?

A. I did.

25. Did you ever have any conversation with him in regard to the business of the Wright-Blodgett Co.?

(Objected to as hearsay.)

A. I have.

26. Do you know that he was employed by the Wright-Blodgett Company?

(Objected to as leading.)

A. Yes, sir; he was their agent.

27. How do you know that?

A. Well, from transactions that I would assist him to make, deeds that I would prepare for him and transactions, sales, etc., I would see him make; that is, purchases of property; I supposed by that he was their agent. I would see him buy land and pay for it.

28. That land was for whom?

A. For the Wright-Blodgett Co.

29. You stated that Mr. Dickens was employed as agent for the Wright-Blodgett Co. On what knowledge do you base that statement?

A. Mr. Dickens was employed at one time by the Wright-Blodgett Co.

30. How do you know that?

A. From correspondence and conversations had with him and business transactions with him. Mr. Dickens was Mr. Kelly's, I would term it, private secretary. He was stationed at Lake Charles, in the office, kept his books, made his maps, looked after his correspondence. If Mr. Dickens cruised timber or went into the woods and purchased and purchased land I know absolutely nothing about it.

31. In the absence of Kelly who was in charge, in authority, in Lake Charles for W-B Co. during the time Mr. Dickens was employed by them?



A. Mr. Dickens; Pugo & Moss was their counsel. Mr. Dickens would confer with them.

32. Is there any way you can fix the time of employment of Mr. Dickens?

A. No way at all, unless I can see some old papers.

33. Do you know who succeeded him in the office of Wright-Blodgett Co.?

A. I would not be positive, but I think Foster did; Ben Foster, I believe. I am pretty sure that he succeeded Dickens.

34. For how long a time prior to the employment of Foster do you know that Dickens was employed in the office of Wright-Blodgett Co.?

A. I can't say; I don't know. I really don't know whether one year, six months, two years, eighteen months; I couldn't say with any reasonable degree of certainty.

35. Do you know of anyone occupying Mr. Dickens' position prior to his employment?

A. I cannot remember of anyone.

36. Then Mr. Dickens is the earliest office man for Wright-Blodgett Co. you can remember?

A. To my knowledge he was.

37. Can you state in what year it was you first did work for Wright-Blodgett Co. and kept in touch with their office at Lake Charles?

A. To the best of my recollection it was about 1901, or 1900; maybe a little before, or a little after. I cannot possibly remember these little details.

38. In cases where you purchased land upon a mere receiver's receipt for the Wright-Blodgett Co. had you any instructions from them of any kind as to whether you should make any investigation to find out if the law had been complied with by the entryman?

A. No, sir; Mr. Kelly would require me to send him a description of the land and the man's name.

39. Was that all he would require?

A. He would be the judge of the title and the quantity of timber on the land and if the title was not good he would say it was no good and the transaction would be closed up, and if the timber was no good on the land he would state that the timber was not such timber land as he required or cared to buy. He never gave me any instructions as to titles. He was judge of the title and the timber.

40. Did Mr. Kelly ever come personally to Leesville?

A. Yes, sir.

41. Often?

A. Yes, sir.

42. Would Mr. Dickens ever come personally to  
170 Leesville?

A. Yes, quite frequently.

43. Have you any knowledge of the scope of the employment of Nat Wazey by the Wright-Blodgett Co.; his duties and authority?

(Objection made to any testimony this witness may give not derived from any personal knowledge but from hearsay.)

A. Mr. Wasey was employed to look after the land of the Wright-Blodgett Co., as I understand it; to purchase timber, to prevent trespass on their lands.

44. Where was he located?

A. Located the majority of the time in the neighborhood of Sigler or Slabtown.

45. You think he was their field man?

(Objected to as leading.)

A. Yes, sir; I think so.

(Stenographer's Note: At this point Mr. Mills instructed me to insert all of Mr. Wingate's testimony in each of the several cases.)

#### Cross-Examination.

Monroe:

1. You never knew or heard of Jim Boyd being in the employ of Wright-Blodgett Co. until after Nat Wazey went crazy in 1904, did you?

A. No, sir. That was the first I knew of his employment. If he was employed before that time I have no knowledge of it.

2. In this Stallsby transaction, relative to which you were examined, will you look at two letters, both dated March 24, 1901, which I hand you and ask if you recognize them?

A. I wrote this letter on March 24, 1901, which is signed by me.

3. Did you make the penciled memoranda on the letter signed by Stallsby?

A. I did.

4. Since reading those letter is your memory refreshed at all in regard to that transaction?

A. Yes, sir; I remember that sale was made.

5. In that transactions, I take it, you were acting in the capacity of a land broker?

A. That was all; I got 25 cents an acre commission. I brought the seller and purchaser together.

6. They knew nothing of each other prior to that time?

A. Yes, sir.

7. It was your service in making them acquainted with each other that you received 25 cents an acre?

A. Yes, sir.

171 (These letters filed and marked "W-B Co. Hester 1" and W-B Co. Hester 2.")

8. You say at the time this sale was made you knew nothing about the Hester claim being a homestead case at all?

9. And that impression was conveyed to the Wright-Blodgett Company?

A. The letter shows what I conveyed to them.

10. Mr. Wingate, had you any personal knowledge other than what you heard from people as to what the employment of Mr. Wasey was by the Wright-Blodgett Co.?

A. Well, I will answer that of course I was bound to know he was Wright-Blodgett's agent, because I had business with them, and he had business with them.

11. You knew he had business with them to a certain extent; but do you know his authority?

A. That I know nothing about; he might have been without certain powers that I thought he had.

12. That same condition would be applicable to Mr. Dickens, would it not? You don't know of your own knowledge what his authority and power was?

A. I don't know the extent of his powers; I knew he transacted business for them, but I don't know the extent of his authority.

13. And I take it that the business Wasey did that you knew positively about was in connection with the closing up

of deals for the purchase of land—that is to say, when the actual deed was being signed?

A. Yes, sir; I saw money paid over by him.

14. You knew that it was the custom of Wright-Blodgett Co., as Mr. Moss of Pugo & Moss testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; they were Mr. Kelly's instructions. He told me, that at any time he should happen to be away that if I had an abstract made and sent to Pugo & Moss and if Pugo & Moss passed on the abstract the draft would be paid. Pugo & Moss passed on all their abstracts.

15. They didn't purchase any land until Pugo & Moss approved the title?

A. That was my understanding.

16. You know also that Dickens defaulted and left the country suddenly while in the employ of Wright-Blodgett Co.?

(Objected on the ground of irrelevancy.)

A. I don't know; I have heard that.

17. You know that they hunted for him without being able to find him?

(Objected to the ground of irrelevancy.)

A. I have heard he was hunted for; I don't know that he was.

18. Didn't persons from Wright-Blodgett Co. ask if you knew where he was?

A. Mr. Kelly told me he was trying to find him, but had not been able to locate him.

19. He never has been able to locate him?

A. Not to my knowledge.

20. Mr. Foster stated while on the stand that when he left the employ of Wright-Blodgett Co. he was succeeded by Mr. Livingstone. Is that correct?

A. I never had any business with Livingstone. I have heard of Livingstone being with Wright-Blodgett Co., but I don't know anything about him.

21. What I want to find out is whether Livingstone was employed before or after Foster.

A. He was employed after. I don't now [know] nothing about the employment.

22. You know, Mr. Wingate, as a timber man, do you not, that it is a custom with all large timber concerns to have an estimate of a great tract of land made by timber cruisers, as J. D. Lacy & Co., and after having an estimate made they buy on the strength of that estimate, relying on that estimate as to the statement of the amount of timber on that land?

(Objected to on the ground of irrelevancy and for the reason that the custom of other companies and the transactions of their business has nothing to do with this case.)

A. The Wright-Blodgett Co. had their own cruise. It was my understanding and my observation that the majority of large timber holders that move into a territory for the purpose of acquiring land generally have their own employes to cruise the timber and it is customary for them to cruise all the timber in the community lying contiguous and that they use this information from time to time on a basis of value.

23. They come in and cruise all the timber in that locality?

A. Yes, sir; it saves money and time.

24. All cruises are done at the same time when they come into the country?

A. Yes, sir.

#### Re-examination.

Mills:

1. You state that you did not know that the Stallsby case was based on homestead entry on which receiver's receipt alone had been issued?

A. I got the impression some way that that was some old claim.

2. You would not pass upon titles in these cases?

A. No, sir.

3. You state that before making purchase the Wright-Blodgett Company required an abstract and submitted it to their attorneys?

A. Yes, sir; in all the deals I closed up for Mr. Kelly it was his instructions that I make abstract of title, or cause the same to be done; that I make draft on him through the First

National Bank of Lake Charles, or the Calcasieu National Bank, and send the abstract of title to Pugo & Moss; that if Pugo & Moss found the title to be correct they would authorize the bank to honor the draft.

4. Every abstract was made in this case and examined in a case in which the title was based on a receiver's receipt the abstract would show that?

A. Yes, sir.

5. Then, if the company pursued in this case the custom which you have outlined they would know full well before they made this purchase that this title was based on a receiver's certificate.

A. The abstract would show the receiver's certificate.

6. Mr. Monroe has asked you about the disappearance and the default of Dickens and whether or not Kelly came and made inquiries about it. Who do you consider the best witness as to those facts?

A. Mr. Kelly is the best witness.

#### Recross-Examination.

Monroe:

1. Don't you remember that Mr. Kelly was not in this country, that he was out on the Pacific coast at the time of Dickens' default, and it was only a great deal later that he came down and inquired about him?

A. Yes, sir; I heard Kelly was absent at the time.

2. Then Kelly would have no personal knowledge about it?

A. No, sir.

3. Did Pugo & Moss wire you about Dickens at the time?

A. I believe they did. The [they] notified me that he had skipped out and was no longer authorized to attend to their business.

174 SAMUEL E. BRYERS, witness in behalf of complainant, being duly sworn, testified as follows:

(Mills:)

1. Have you already testified in this case at Lake Charles?

A. Yes, sir.

Q. You made the homestead which is being investigated in this case?

A. Yes, sir.

3. And commuted the same?

A. Yes, sir.

4. Was it necessary for you to pay any money to bring about this commutation? What were you required to do by the government?

(Objected to as leading.)

A. To pay the money.

5. How much money?

A. I don't know.

6. How much an acre?

A. \$2.50 an acre.

7. Did you have this money of your own at the time you made this commutation?

A. No, sir.

8. Where did you get the money?

A. Mr. Wazey let me have it.

9. What is his first name?

A. I couldn't tell you.

10. What business in the community?

A. Buying land, I reckon.

(Counsel for defense objected to his "reckoning.")

11. Did you have any agreement or understanding with Wazey as to the advancement of this money?

A. To be sure.

12. What was that agreement or understanding?

A. For me to let him have the land.

175 13. Did you comply with your part of that agreement by selling him the land after commuting it?

A. Yes, sir.

14. Do you know whether the land was sold to him personally or to some company he represented?  
 A. Must have been to a company.
15. Do you know to whom you made deed to that land?  
 A. No, I do not.
16. Did you ever sign the deed?  
 A. No, sir.
17. Could you write?  
 A. No, sir.
18. Could you sign your name?  
 A. No, sir.
19. Do you remember how much you were paid for that land?  
 A. No, sir; it was not quite \$100.00. I forget just what it was.
20. You were paid about \$100.00 at the time of the sale?  
 A. About that much.
21. Was that the price agreed upon?  
 A. Yes, sir.
22. Do you know what consideration or price the deed recited?  
 A. No, sir.
23. How long before you made your commutation was it that you had this agreement with Nat Wazey to advance you the money with which to take up the homestead land upon your promising to sell him the land after you had commuted it?  
 A. The same day.
24. Was Nat Wazey present when you made your proofs?  
 A. No, sir; I don't believe he was. He was there, but not when I made my proofs.
25. It was before you made proofs that you had this understanding with him?  
 A. Yes, sir.
26. How long after you made your commutation was it that you sold the land to Wazey, or the company?  
 A. I don't recollect.
- 176 27. Any great length of time, or a short time?  
 A. No great while.
28. Did you sell more than one tract of land to Wazey or any of his company?  
 A. No, sir.



## Cross-Examination.

Monroe:

1. When you were sworn under oath the last time in this case you were asked "When did you sell it (meaning the land) to Wazey; how long after your commutation," and you answered, "Why, I never sold it until I got my final receipt." Were you telling the truth?

A. Well, I must've made a mistake.

2. You swore to something that was not the truth when you made that statement?

A. I just made a mistake.

3. You perjured yourself under the law when you made the statement that you did not sell until after you got your final receipt?

A. I just made a mistake. It's so long a body will forget for sure. I am honest with anybody and want to treat people right, but so many things will bother people.

4. If I understand correctly, you don't remember that you made an agreement to sell to Wazey before you got your final receipt or after you got your final receipt?

A. Ask me that again.

5. You don't remember that you made an agreement to sell to Wazey before you for your final receipt or after you got it?

A. Yes, I sold it to him after I got my final receipt.

6. You didn't sell it then 'til after you got your final receipt?

A. Yes. I didn't sell it 'til after I got my final receipt.

7. And you never made any binding agreement with him to sell it to him until after you got your final receipt, did you?

A. Well, I don't want to mix myself up.

8. Well, if you remember say so; if you don't remember, say so.

177 (Objected to by government for the reason that the witness, who is not a lawyer, is called upon to place a meaning upon the word "binding.")

9. Go ahead and answer, Mr. Bryers, and state if you had any such agreement with Wazey before you got your final receipt.

A. I have forgot, shore.

10. When you got your final receipt you could have sold the land to anybody you wanted?

A. Yes, sir—no, I couldn't either, 'cause I'd promised to sell it to him.

11. Mr. Bryers, when you were formerly sworn in this case Mr. Mills asked you "Were any promises made by you to Wazey in consideration for this money," and you answered, "No, I don't believe there were any." Were you telling the truth?

A. Well, I didn't know for certain.

12. What, if anything, has refreshed your memory since that time?

A. Well, I don't know.

13. Have you talked to anybody about this case since then?

A. No, sir.

14. Not to a soul? Not to anybody representing the U. S. government? Didn't even talk to the marshal about coming up here, I suppose?

A. Of course he made me come up here.

15. Who else did you talk to besides the marshal?

A. I haven't talked to anybody?

16. Not to a soul? Do I understand that you sit there and swear you have not talked to anybody about this case since you testified last? You have been talking to Mr. Elstner and Mr. Mills about it?

A. Not to Mr. Elstner.

17. Have you talked to Mr. Mills about it?

A. He asked me a few questions about it.

18. When?

A. Today.

19. You were mistaken when you said you had not talked to anybody?

A. Did I tell you I hadn't talked to anybody?

178 20. Yes. Now did you talk to anybody or not?

A. Well, I just cross myself all up. I had to—

21. Just answer the question; have you talked to anybody or not?

A. Mr. Mills asked me a few questions.

22. Did anyone else?

A. No, sir.

23. Nobody asked you a few questions down at Lake Charles?

A. What about? In that case?

24. Yes. Did you ever testify in this case before?

A. Yes, sir; I was down there.

25. You remember that?

A. Yes, sir.

26. You are sure you remember?

A. Yes, sir.

27. Have you ever talked to anybody about this case since?

A. No, sir; only Mr. Mills a little today; all I've ever said.

28. Has there been a government agent at your house lately?

A. No, sir.

29. Nobody representing the government been there lately?

A. No, sir.

30. Nobody summoned you to appear as witness in this case in December?

A. No, sir.

31. You did not go to Lake Charles?

A. No, sir.

32. You had not been away from your home in regard to this case since you were in Lake Charles a year ago?

A. No, sir.

33. Nobody asked you any questions about the case except Mr. Mills?

A. That is all.

34. Do you remember whether or not when you swore at Lake Charles that you had made no promises to Wazey when you got your final receipt that you were telling the truth or not?

Well, I just made a mistake then if I did. Of course I can't remember that far back.

35. Then you don't remember that you made any promises to Wazey when you got your final receipt or not?

A. You've crossed me up so I can't tell nothing.

36. Do you remember now that when you got your final receipt you had made any promises to Nat Wazey or not?

A. Yes, sir; I made promises.

37. What promises did you make to him?

A. I would let him have the land.

38. When was it you made him that promise?

It was the same day I made my proof.

39. Was it before or after your [you] made your proof?

A. It was before I made my proof.

40. How long before?

A. The same day.

41. How many hours before?

A. I don't know exactly how long.

42. Where were you living at the time you made your entry?

A. Working on my place and working Mr. Mike Smith's; I was working with him. I was living on the place—staying there.

43. How long did you work for Mike Smith?

A. I don't exactly know how long.

44. About how long?

A. Pretty well all the time I had my homestead; I worked with him off and on, and worked some on my place.

45. What cooking arrangement did you have on your place?

A. Just my grub.

46. You have been indicted by the U. S. government?

A. Yes, sir; I reckon so.

47. The indictment now pending? You have been tried?

A. No, sir.

48. You were indicted for perjury, were you not?

A. I believe so.

49. How many times have you been indicted for perjury?

A. Only one.

50. What else were you indicted for?

180 A. Nothing else, in all my life. Never was in court.

51. Have you ever talked with Mr. Goleman about this case?

A. Yes, sir; he was down a right smart while ago.

52. He asked you to make an affidavit?

A. Yes, sir.

53. And told you if you made an affidavit the prosecution for perjury would be all right, didn't he?

A. I have forgotten now.

54. You swore to that the last time you were on the stand. Were you telling the truth?

A. You say I swore to that?

Yes.

Well, I guess it was right then. I have forgot.

55. What time of day did you make your commutation proof?

A. I can't tell you; I don't know what time it was.

56. How do you happen to be so certain that you made this agreement with Wazey the same day you made your commutation proof?

A. Of course I recollect that because I didn't have any money to make my proof and he furnished me the money. That is how I remember; I didn't have the money.

57. Did he give you any money personally?

A. No, sir.

58. Who made your proof for you?

A. Jim Boyd.

59. How do you know Nat Wazey ever furnished any money?

A. I am not certain, of course. I don't know for certain. I think he did. I did not aim to beat the government out of anything. I don't want to beat anybody.

60. You don't know for certain that he ever furnished any money or not?

A. Yes, he furnished the money.

61. How do you know?

A. Well, he promised it to me.

#### Re-examination.

Mills:

1. What you testified to here this evening in response to my questions—was it the truth or the untruth of this matter?

A. I did not cross yours, did I?

2. I ask you again, when you testified here this evening did you tell the truth about this matter, or not?

A. I told the truth as near as I could.

In this case the government offers in evidence under seal of the general land office of the Department of the Interior copies of all papers filed and receipts issued in the matter of the homestead entry of Samuel E. Bryers, #12,279, to be filed and marked Exhibit "B."

182 Counsel for Wright Blodget Company offers the patent from the U. S. government to Mr. S. E. Bryers, marked "Bryers 1"; the abstract and opinion of Pugo & Moss, marked "Bryers "2," offering same subject to the right of defendant to withdraw it for filing in the Aiken, Jr., case; and the testimony of C. D. Moss.

(Filing and admission of abstract and opinion in this case objected to by the government for the same reasons made at the time of taking Mr. Moss' testimony.)

Case closed by plaintiff and defendant.

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(To be inserted at end of each case.)

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### AGREEMENT.

It is agreed by the counsel for the government and counsel for defendant that all testimony shall be taken at the present sitting, except otherwise agreed upon; that the cases shall be argued and submitted at the May term of Court in Lake Charles, and that thereafter the Court may render judgment either in vacation or term time as best suits its convenience, it being understood that in cases of appeal either side will accept service.

It is admitted that both the government and the defendants in these cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him.

184      DEMAND THAT OTHER DEFENDANT JOIN  
APPELLANTS IN APPEAL.

Filed June 10, 1912.

LEROY B. GULOTTA,  
Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

May 25th, 1912.

Samuel E. Bryers, Esq.

Dear Sir: The undersigned counsel for the Wright-Blodgett Company, Ltd., hereby demand that you shall join them in a petition of appeal, which they propose making to the United States Circuit Court for the Fifth Circuit and Western District of Louisiana, in the case of United States vs. Samuel E. Bryers, and the Wright-Blodgett Co., Ltd., No. 380 of the docket of said Court, seeking an appeal to the United States Circuit Court of Appeal from a decree entered by said Circuit Court in said cause on the 6th day of May, 1912.

This petition will be presented in said Court at Shreveport, Louisiana, on the 10 day of June, 1912, at eleven o'clock, and if you fail to assent to this request at that time, such failure to assent to this request will be considered as a refusal to join in said bill.

HALL, MONROE & LEMANN,  
MITCHELL & YOUNG,  
Attorneys Wright-Blodgett Company, Ltd.

Exhibit "A."

Date June 8th, 1912.

I, the undersigned, do hereby certify that I am personally acquainted with Samuel E. Bryers, and that I served the original letter of which the above is a copy on the said Samuel E. Bryers, by handing it to him personally, and received from him personally the attached reply, which he signed in my presence.

J. W. WHITE.

185      REFUSAL OF DEFENDANT TO JOIN IN  
APPEAL.

Filed June 10th, 1912.

LEROY B. GULOTTA,  
Clerk, U. S. District Court, West. Dist. of Louisiana.

N. O., June 8th, 1912.

Messrs. Hall, Monroe & Lemann,  
and Mitchell & Young, Attorneys,  
Wright-Blodgett Co., Ltd., City.

Gentlemen:

I acknowledge receipt of your letter of May 25th, demanding that I join with the Wright-Blodgett Company, Ltd., in a petition of appeal, which they propose to make to the United States Circuit Court for the Fifth Circuit, and Western District of Louisiana, in the case of the United States of America, Complainants, vs. Samuel E. Bryers, and the Wright-Blodgett Company, Ltd., Defendants, No. 380 of the docket of said Court.

I do now decline in said appeal.

Yours truly,

SAMUEL E. BRYERS.

Exhibit "B."

186      In the District Court of the United States for the  
Western District of Louisiana, Fifth Circuit of  
the United States.

United States of America

vs.      No. 380. In Equity.

Samuel E. Bryers and Wright Blodgett Company, Ltd.

To the Honorable the Judges of said Court:

The petition of the Wright Blodgett Company, Ltd., defendant in the above entitled and numbered cause, with respect represents:

That they conceive themselves aggrieved by the decree entered in this cause on the sixth day of May, 1912, and that



they desire to and hereby appeal the said decree to the United States Circuit Court of Appeal for the Fifth Circuit, and present herewith and make part of this petition, as "Exhibit A" hereto, assignments of error in said decree.

That as appears by the demand and notice annexed to and made part of this petition, as "Exhibit B" hereto, Samuel E. Bryers, one of the defendants to the said bill, has declined to join your petitioner in said appeal, as appears by his letter hereto annexed marked "Exhibit C."

That by reason of the premises, your petitioners are entitled to a severance of this appeal from the said Samuel E. Bryers.

Wherefore, the premises considered, petitioners pray that their appeal may be allowed to operate as a supersedeas, upon the giving bond, with surety, in an amount to be fixed by the Court and conditioned according to law and that a transcript of the whole record, proceedings, testimony and papers upon which said decrees were made, duly authenticated, be sent to the United States Circuit Court of Appeal for the Fifth Circuit, in the manner and form and at the time prescribed by law and by the practice of this Court.

That citation issue to the United States of America and the said Samuel E. Bryers, and all other necessary parties in the manner and form prescribed by law, and that your petitioners have such further relief as may be necessary in the premises.

HALL, MONROE & LEMANN,  
Attorneys for Petitioners.

### ORDER.

Upon the filing and reading of the foregoing petition, it is ordered that the appeal and supersedeas and citation and service and severance and relief above prayed for, be allowed upon petitioner's giving bond, according to law, with good and sufficient surety, in the sum of (\$2000.00) two thousand dollars. Let the clerk of this Court take and approve said bond.

This appeal to be returnable into said Court according to law.

ALECK BOARMAN, Judge.

In open Court at Shreveport, La., June 10th, 1912.

Indorsed: No. 380. In Equity. U. S. Dist. Court, West.

Dist. of La. U. S. vs. S. E. Bryers & Wright-Blodgett Co., Ltd. Petition and Order Granting Appeal. Filed June 10, 1912. Leroy B. Gulotta, Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

Citation and service of same and further notice of said appeal waived.

E. H. RANDOLPH,  
U. S. Attorney.

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188      ASSIGNMENT OF ERRORS ON BEHALF OF  
THE WRIGHT BLODGETT COMPANY,  
LTD., APPELLANTS.

In the District Court of the United States for the Western  
District of Louisiana, Fifth Circuit of the United States.

United States of America  
vs.                      No. 380. In Equity.  
Samuel E. Bryers & Wright Blodgett Co., Ltd.

Now comes the Wright Blodgett Company, Ltd., and assigns the following errors committed by the Court to its prejudice in the decrees and orders herein appealed from and prays that said decrees and orders may be reversed and set aside.

189              1. The Court erred in declaring the patent issued to Samuel E. Bryers, April 1st, 1902, to the land described in the petition null and void and ordering this appellant to surrender, deliver and return same and restraining and enjoining the appellant from ever claiming or asserting any right, benefit, privilege, or advantage whatsoever under the said patent.

2. The Court erred in finding that in purchasing land for value from the holder of a final receipt or certificate, this appellant was bound to hunt for grounds of doubt and make a searching inquiry as to the validity of his vendor's claims to the property.

3. This Court erred in failing to find that it was incumbent upon the plaintiff to prove:

1. That there was fraud in the original entryman.
2. That the Wright Blodgett Company, Ltd., had actual notice thereof at the time that it purchased the property.

4. The Court erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

"So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipts, the deeds of the entrymen to C and the deeds of C to C1, it was as open to the officers of the government as to C1, if indeed he knew anything about those dates, yet, they seem to have suspected nothing, and he was advised by reputable counsel that the titles were good and bought only on his advice."

5. The Court erred in failing to find that the Wright Blodgett Co., Ltd., was a purchaser in good faith, for value, and without actual or other notice of the fraud, if any, in the original entrymen.

6. The Court erred in failing to find that the Wright Blodgett Company, Ltd., being a purchaser for value in good faith without actual notice, was entitled to hold the land under its patent regardless of the fraud *vel non* in the original entrymen.

7. The Court erred in finding that complainant has proven in this record that there was any fraud or violation of the law in the original entrymen.

8. The Court erred in failing to find that there is no proof that any representative of the Wright Blodgett Company, Ltd., was ever on the land, in failing to find that the entrymen built a house and corn crib, cleared an acre and a half and cultivated crops on the land and that there was, therefore, nothing to put even an inspector on notice that he and his witnesses swore falsely when they swore that they had complied with the law.

9. The Court erred in finding that an applicant who has in good faith complied with U. S. R. S. 2290 was without right prior to final proof under U. S. R. S. 2301 to contract to convey his land on receipt by him of final receipt.

10. The Court erred in considering the question referred to in assignment 12 at all, since the same was not raised in the bill and was seasonably objected to when raised in the evidence.

11. The Court erred in finding that the Wright Blodgett Co., Ltd., or anyone authorized to represent them contracted with Bryers to purchase his land upon the receipt by him of his final certificate.

12. The Court erred in failing to dismiss the bill.

Wherefore, appellant prays that these assignments of error may be maintained and that the decrees complained of may be reversed, annulled and set aside and amended with costs.

HALL, MONROE & LEMANN,

Attys. for W. B. Co., Ltd.

Indorsed: No. 380. In Equity. U. S. Dist. Court, West. Dist. of La. U. S. vs. S. E. Bryers, and Wright-Blodgett Co., Ltd. Assignment of Errors. Filed June 10, 1912. Leroy B. Gulotta, Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

191 United States District Court, Western District of Louisiana.

The United States of America

vs. No. 380. In Equity.

Samuel E. Bryers, and the Wright-Blodgett Co., Ltd.

Know all men by these presents, that we, The Wright-Blodgett Co., Ltd., of Saginaw, Michigan, as principals, and the United States Fidelity and Guarantee Company of Baltimore, Maryland, as surety, are held and firmly bound unto the United States of America in the full and just sum of two thousand (\$2,000.00) dollars, to be paid to the United States

of America, or to any person or persons authorized to receive same, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 10th day of June, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the District Court of the United States for the Western District of Louisiana, in a suit pending in said Court between said United States of America and Samuel E. Bryers and the Wright-Blodgett Company, Limited, a decree was entered against the said defendants, Samuel E. Bryers, and the Wright-Blodgett Company, Limited; the said Wright-Blodgett Company, Limited, having obtained from the said Court an order allowing an appeal and supersedeas to the United States Circuit Court of Appeals, to reverse the decree of the aforesaid suit, and a citation directed to the said United States of America to be issued, citing and admonishing the said United States of America to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana.

Now, the conditions of the above obligation is such, that if the said Wright-Blodgett Company, Limited, shall prosecute therein said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void, otherwise to remain in full force and virtue.

[Seal] THE WRIGHT-BLODGETT CO., LTD.,

By WATTS K. LEVERICH.

THE UNITED STATES FIDELITY &  
GUARANTY CO. OF MARYLAND.

By WM. M. FORD, Atty.-in-Fact.

Approved June 10th, 1912.

LEROY B. GULOTTA,

Clerk U. S. District Court, Western District of  
Louisiana.

Indorsed: No. 380. United States District Court, Western District of Louisiana. The United States of America vs. Samuel E. Bryers and The Wright-Blodgett Co., Ltd. Appeal Bond. \$2,000.00. The United States Fidelity & Guaranty Co., of Maryland, Surety. Filed Jun. 10, 1912. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

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## CLERK'S CERTIFICATE.

United States of America, United States District Court for  
the Western District of Louisiana.

Clerk's Office:

I, LEROY B. GULOTTA, clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing — pages contain and form a full, complete, true and perfect transcript of the record and proceedings had and evidence adduced in the cause entitled United States of America versus Samuel E. Bryers and The Wright-Blodgett Company, Limited, No. 380, in equity of the docket of the United States District Court, formerly United States Circuit Court, for the Western District of Louisiana, said transcript being made in accordance with the praecipe filed by Messrs. Hall, Monroe & Lemann, solicitors for appellant.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 6th day of July, A. D. 1912.

LEROY B. GULOTTA,

[Seal]

Clerk United States District Court for the  
Western District of Louisiana.



That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz.:

ARGUMENT AND SUBMISSION.

Extract From the Minutes of January 23d, 1913.

Wright-Blodgett Company, Limited,

vs.

No. 2409.

The United States of America.

On this day this cause was called, and, after argument by J. Blanc Monroe, Esq., for appellant, and E. H. Randolph, Esq., United States Attorney, for appellee, was submitted to the Court.



## OPINION OF THE COURT.

Filed February 18th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

|                              |           |
|------------------------------|-----------|
| Wright-Blodgett & Co., Ltd., |           |
| vs.                          | No. 2407. |
| The United States.           |           |
| Boyd's Case.                 |           |

|                              |           |
|------------------------------|-----------|
| Wright-Blodgett & Co., Ltd., |           |
| vs.                          | No. 2408. |
| The United States.           |           |
| Aiken's Case.                |           |

|                              |           |
|------------------------------|-----------|
| Wright-Blodgett & Co., Ltd., |           |
| vs.                          | No. 2409. |
| The United States.           |           |
| Bryers' Case.                |           |

|                              |           |
|------------------------------|-----------|
| Wright-Blodgett & Co., Ltd., |           |
| vs.                          | No. 2410. |
| The United States.           |           |
| Hicks' Case.                 |           |

|                              |           |
|------------------------------|-----------|
| Wright-Blodgett & Co., Ltd., |           |
| vs.                          | No. 2411. |
| The United States.           |           |
| Allen's Case.                |           |

Appeals From the United States District Court for the Western District of Louisiana.

Before PARDEE, Circuit Judge, and NEWMAN and GRUBB, District Judges.

By the COURT.

The above entitled and numbered cases are separate appeals from separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that

Wright, Blodgett & Company, vendees of the alleged home-teaders, are charged through their active agents on the ground with knowledge of the fraud.

The decree in each of the above mentioned cases is affirmed.

### JUDGMENT.

Extract From the Minutes of February 18th, 1913.

Wright-Blodgett Company, Limited,

versus

No. 2409.

The United States of America.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby affirmed.

### PETITION FOR REHEARING.

Filed March 8th, 1913.



# United States Circuit Court of Appeals

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No. 2409.

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**WRIGHT-BLODGETT COMPANY, LIMITED,**  
**(Bryers Case).**

**Appellant,**

**versus**

**UNITED STATES OF AMERICA,**

**Appellee.**

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To the Honorable the Judges of the United States Circuit  
Court of Appeals, Fifth Circuit:

The petition of the **Wright-Blodgett Company, Limited**,  
appellee herein, with respect shows:

That a rehearing should be granted in this case, for  
this, to-wit:

## I.

The record shows conclusively that the United States  
Government complainant in this case indicted for per-  
jury the poor wretch of an entryman whom it thereafter  
attempted to use as a witness. This miserable being took

the stand with the hunted look of a desperate animal and in mortal terror testified first to one thing then to its antithesis and finally wound up by turning pitifully to the District Attorney and asking:

“I didn’t cross yours did I?” (Tr., p. 166, Q. 1)  
see, also bottom p. 65.

Another star witness of the complainant is Ed. Dyal whose criminal record (Tr., pp. 147-8), is long and varied. He has been in the penitentiary at least once and in jail five or six times, according to his own statement.

John Jones is another witness, has been indicted for “cursing and swearing and using obscene language,” and so it goes until the regular question on cross-examination came to be “Have you ever been indicted?”

Your Honors would not condemn a yellow dog of stealing a bone on the testimony of such witnesses. Surely you would not deprive defendant of a valuable piece of property for which it paid cash money and on which it has, for more than ten years, been paying taxes, on such evidence.

Particularly is this so when you recall the language of the Supreme Court of the United States in the **Maxwell Land Grant case, 121 U. S. 325**, where the Court said:

“ ‘We take the general doctrine to be that when in a Court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, **THE TESTIMONY ON WHICH THIS IS DONE MUST BE CLEAR, UNEQUIVOCAL AND CONVINCING, AND THAT IT CANNOT BE DONE UPON A BARE PREPONDERANCE OF**

**EVIDENCE WHICH LEAVES THE ISSUE IN DOUBT.** If the proposition, as thus laid down in the cases cited is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof.'

"The doctrine of that decision has been reaffirmed in numerous subsequent cases. **United States v. Stinson**, 197 U. S. 200, 25 Sup. Ct. 426, 49 L. Ed., 724, and cases there cited."

## II.

Without these witnesses this is no case and even with them what is there.

The Wright-Blodgett Company, Limited, went into that country and bought 15,000 acres of land. They bought on a cruiser's estimate, **after submitting all titles** to reputable attorneys and buying only on their advice.

The bill charges knowledge of fraud through Nat Wasey and J. M. Boyd. It is shown conclusively that J. M. Boyd was not in defendants employ and it is not shown

that Wasey was ever on the land before it was purchased. The Government puts Bryers, the entry man on the stand. He, of all persons, was best qualified to state whether Wasey knew anything about the land or not. He was testifying under "threats of Hell and hopes of Paradise" and would certainly have not been a hostile witness. Yet the **Government carefully avoided asking him the important question. Why?**

Only one reason suggests itself to the mind. Had they asked Bryers if Wasey had knowledge of what he did in the way of compliance with the homestead law, he would have said **no**.

Why did the Government abandon their original position and seek a new ground of attack. One which on pages 25 to 31 of our yellow-backed brief we have exploded. Because and **only because they realized that they had not and could not prove knowledge in the Wright-Blodgett Company, Limited, of fraud in the original entryman.** Turn to appellees brief and see if he has made any effort to show such knowledge.

### III.

An effort was made to show that the Wright-Blodgett Company, Limited, had contracted to purchase Bryer's land before he made his commutation proof and received his final receipt. This effort failed because to support it Bryers alone testified and after reading his testimony no Court would credit any statement he might make.

Besides this such a contract had not been alleged in the bill and hence was irrelevant and even if it had been al-

leged was not good ground to annul the patents as appears from

207 U. S. 455, Williams v. United States.

211 U. S. 425, United States v. Biggs.

211 U. S. 523, United States v. Suelenberger.

211 U. S. 525, United States v. Follman.

Wherefore petitioner prays that a rehearing be granted and for general relief.

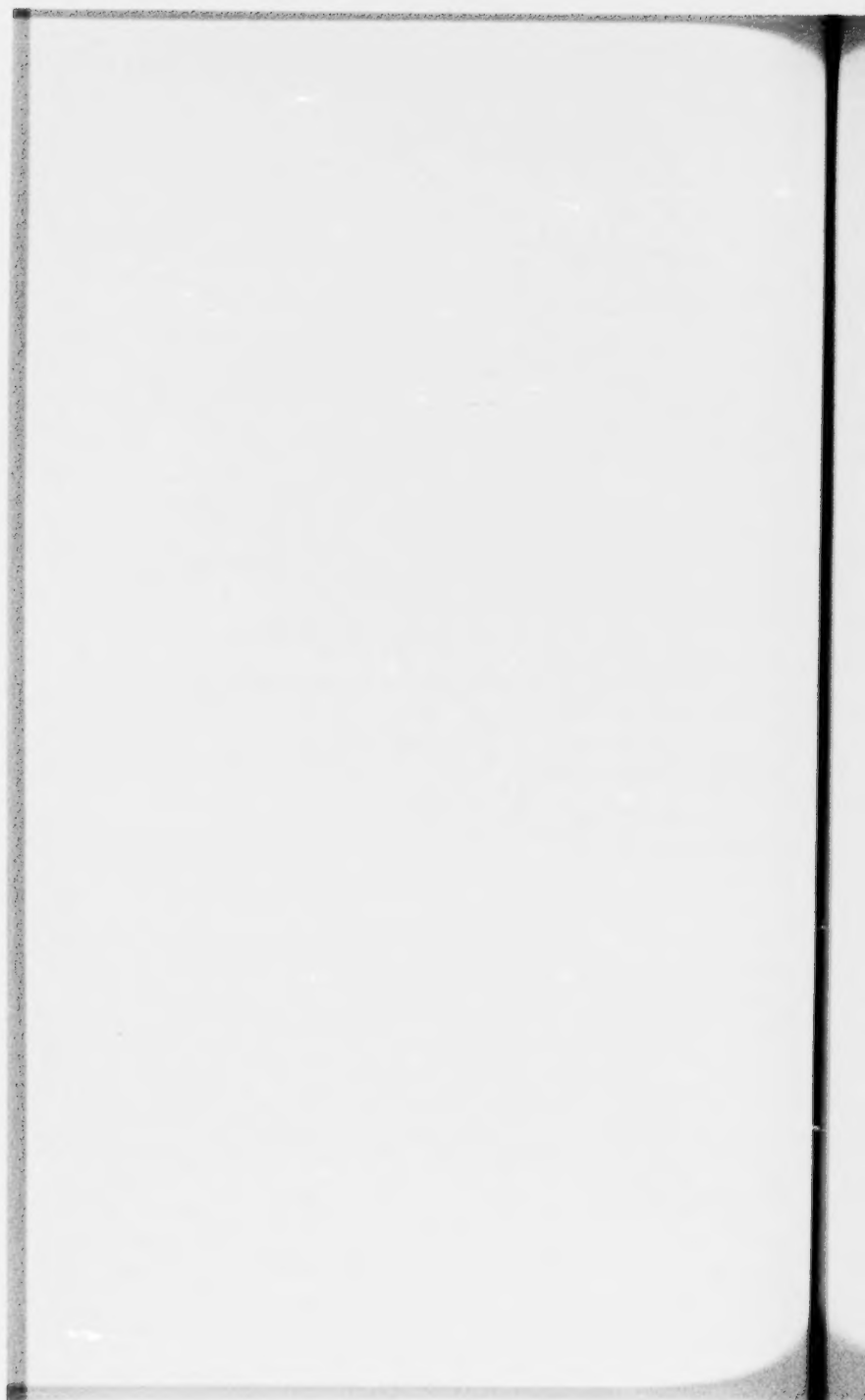
J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHELL,  
Solicitors.

I certify that in my opinion the foregoing application is well founded.

.....*J. Blanc Monroe*  
Solicitor.

New Orleans, March. 1. 1913.





## ORDER DENYING REHEARING.

Extracts From the Minutes of March 18th, 1913.

Wright-Blodgett Company, Ltd.,

versus

No. 2409.

United States of America.

Ordered that the petition for rehearing filed in this cause be, and the same is hereby denied.

## PETITION FOR APPEAL, AND ORDER.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett Company, Limited,

(Bryers Case)

Appellant,

vs.

No. 2409.

The United States of America,

Appellee.

To the Honorable the Judges of the United States Circuit Court of Appeals, Fifth Circuit:

Now comes the Wright-Blodgett Company, Limited, by its undersigned solicitors, and complains that in the record and proceedings, and also in the rendition of the decree of the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, in the above styled and numbered cause, on the 18 day of February, 1912, which decree was made final by rehearing being denied on the 18 day of March, 1913, and which decree affirmed the decree of the United States Circuit (now District) Court, for the Western District of Louisiana, in said cause, manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the Circuit Court of the United States for the Western District of Louisiana depended upon the fact that the suit was brought by the United States of America and arose under the Public Land Laws of the United States, the

defendant, appellant, relying for its defense upon said laws and the construction heretofore placed upon them by the Supreme Court of the United States; that the amount involved therein and the matter in controversy exceeds the sum of one thousand dollars (\$1000.00) besides costs, and that this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final.

Wherefore, petitioner prays for an allowance of the appeal, to the end that the cause may be carried to the Supreme Court of the United States. And petitioner prays for a supersedeas of said judgment, and such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

(Signed) WRIGHT-BLODGETT CO., LTD.,

(Signed) J. BLANC MONROE,

(Signed) MONTE M. LEMANN,

Solicitors.

Service accepted and citation waived.

(Signed) E. H. RANDOLPH,

U. S. Attorney.

March 24, 1913.

#### ORDER.

Appeal and supersedeas allowed and bond fixed in the sum of \$800, conditioned as the law directs.

This, the 25th day of March, 1913.

(Signed) DON A. PARDEE, Judge.

## ASSIGNMENT OF ERRORS.

Filed March 25, 1913.

United States Circuit Court of Appeals.

Wright-Blodgett Company, Ltd.,

(Bryers Case)

versus

The United States of America,

Appellant,

No. 2409.

Appellee.

## ASSIGNMENT OF ERRORS.

The Wright-Blodgett Company, Limited, appellant, by its undersigned solicitor, in connection with its petition for appeal herein, presents this, its assignment of errors, and says:

That the decree made and entered on the 15th day of February, 1913, by the Circuit Court of Appeals of the United States, for the Fifth Circuit, in the case styled Wright-Blodgett Company, Limited, Appellant, vs. The United States of America, Appellee, No. 2409, of the docket of said Court, is erroneous, and against its just rights in the following particulars, to-wit:

(1) The Circuit Court of Appeals erred in declaring the patent issued by the United States to Samuel E. Bryers on April 1, 1902, to the land described in the bill of complaint, null and void, and in ordering this appellant to surrender, deliver and return same, and in restraining and enjoining this appellant from ever claiming or asserting any right, benefit, privilege, or advantage whatsoever under said patent.

(2) The Circuit Court of Appeals erred in finding that any fraud in the homestead entry had been proven by the complainant.

(3) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Co., Ltd., were charged, through their active agents on the ground, with knowledge of fraud in the homestead entry.

(4) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated by this Court in the Maxwell Land Grant Case, where the Court said:

"We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing; and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt."

(5) The Circuit Court of Appeals erred in failing to apply to this case the doctrine enunciated in the Clark case, 200 U. S. 601, where the Court said:

"So far as any inference was to be drawn from the nearness of the respective dates of the receivers' receipts, the deeds of the entryman to C and the deeds of C to C1, it was as open to the officers of the Government as to C1, if indeed he knew anything about those dates. Yet they seem to have suspected nothing and he was advised by reputable counsel that the titles were good and bought only on his advice."

(6) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Company, Ltd., were charged with notice, through their active agents, on the ground. The bill designated Nat Wasey and J. M. Boyd as the persons through whom the Wright-Blodgett Co., Ltd., had received notice. The Wright-Blodgett Co., Ltd., consistently objected to the proof of notice in them through parties other than the said Wasey and Boyd, and under the pleadings and objection of no proof of notice through any other agents could or should have been received or recognized by the Court.

(7) The Circuit Court of Appeals erred in finding that the Wright-Blodgett Co., Ltd., was charged with notice of facts known to Nat Wasey or J. M. Boyd, or any one else, until it was proven that such persons were the agents of the Wright-Blodgett Co., Ltd., and that such facts related to matters within the scope of their authority.

(8) The Circuit Court of Appeals erred in failing to find that the entryman and his witnesses swore that they had complied with the law and that the entryman left on the land a dwelling house and a corn crib, and an acre and a half of cleared land, with evidence of former cultivation, and in failing to find that these mute and written evidences of compliance with the law were sufficient to deceive a vendee.

(9) The Circuit Court of Appeals erred in finding that the land officials of the United States were deceived by the entryman and the evidences of compliance with the law left by the entryman upon the land, and in failing to find that the Wright-Blodgett Company, Ltd., which was confronted with the same statements and same evidences, were not similarly deceived.

(10) The Circuit Court of Appeals erred in failing to dismiss the bill.

Wherefore, appellant prays that the decree herein complained of may in these respects be reversed and corrected, and that appellant may have an adjudication and decree in its favor, in accordance with law and equity, as herein specified.

|          |                           |
|----------|---------------------------|
| (Signed) | J. BLANC MONROE,          |
| (Signed) | MONTE M. LEMANN,          |
| (Signed) | A. R. MITCHEL,            |
|          | Solicitors for Appellant. |

### APPEAL BOND.

Filed March 25th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

Wright-Blodgett Company, Limited,  
(Bryers Case)

Appellant.  
No. 2409.

vs.

The United States of America,

Appellee.

Know All Men By These Presents: That we, the Wright-Blodgett Company, Limited, as principal, and the United

States Fidelity & Guaranty Company of Maryland, as sureties, acknowledge ourselves to be jointly indebted unto the United States of America, and Samuel E. Bryers, appellee, in the above cause, in the sum of eight hundred 00/100 dollars, conditioned that whereas on the 18 day of February, 1913, in the Circuit Court of Appeals of the United States, for the Fifth Circuit, in a suit depending in that Court, wherein the United States of America was plaintiff, appellee, and the Wright-Blodgett Company, Limited, was appellant, numbered on the docket of that Court as above, a decree was rendered against the said Wright-Blodgett Company, Limited, and the said Wright-Blodgett Company, Ltd., having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the Clerk of Court, to reverse the said decree, and a citation directed to the said United States of America and the said Samuel E. Bryers, citing and admonishing each of them to be and appear at a session of the Supreme Court of the United States, to be holden in the City of Washington, in the District of Columbia, on the 24th day of April, next.

Now, if the said Wright-Blodgett Company, Limited, shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) WRIGHT-BLODGETT CO., LTD.,

(Signed) UNITED STATES FIDELITY &  
GUARANTY CO.,

By (Signed) WILLIAM H. KLINESMITH,  
Its Attorney in Fact.

Approved.

(Signed) DON A. PARDEE, Judge.

## CLERK'S CERTIFICATE.

United States of America.

United States Circuit Court of Appeals, Fifth Circuit.

I, FRANK H. MORTIMER, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 176 to 189 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2409, wherein Wright-Blodgett Company, Limited, is appellant, and the United States of America is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 175 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 14th day of April, A. D. 1913.

[Seal]

FRANK H. MORTIMER,

Clerk of the United States Circuit Court of Appeals.



United States Circuit Court of Appeals, Fifth Circuit.

No. 2409.

WRIGHT-BLODGETT COMPANY, LIMITED, Appellant,  
(Bryers Case)

vs.

THE UNITED STATES OF AMERICA, Appellee.

UNITED STATES OF AMERICA:

The President of the United States to Samuel E. Bryers, Greeting:

You are hereby notified that in a certain case in equity in the United States Circuit Court of Appeals, in and for the Fifth Circuit, wherein the United States of America is Complainant, and the Wright-Blodgett Company, Limited and yourself are defendant-, an appeal has been allowed the Wright-Blodgett Company, Limited, therein, to the Supreme Court of the United States. You are hereby cited and admonished to be and appear in said Court at Washington, D. C., within thirty days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedily justice done the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 25th day of March, 1913.

DON A. PARDEE,

*Circuit Judge.*

STATE OF LOUISIANA,

*Parish of Vernon:*

On this, the 2nd day of April, A. D. 1913, personally appeared before the undersigned authority, D. F. Turner, who being duly sworn, deposes and says:

That he delivered a copy of the within citation to Samuel E. Bryers on the 1st day of April, 1913, at Leander, Louisiana, by handing same to said person in person.

D. F. TURNER

Sworn to before me this 2nd day of April, 1913.

[Seal W. W. Thompson, Notary Public, Vernon Parish, La.]

W. W. THOMPSON,

*Notary Public, Vernon Parish, Louisiana.*

[Endorsed:] 2409. In the United States Circuit Court of Appeals Fifth Circuit. Wright-Blodgett Company, Ltd., versus The United States of America. Citation of Appeal to Samuel E. Bryers, and Marshal's Return thereon. U. S. Circuit Court of Appeals. Filed Apr. 4, 1913. Frank H. Mortimer, clerk.

Endorsed on cover: File No. 23,653. U. S. Circuit Court Appeals, 5th Circuit. Term No. 1078. Wright-Blodgett Company, Limited, appellant, vs. The United States. Filed April 22nd, 1913. File No. 23,653.

FILED

DEC 29 1914

JAMES D. MAHER

CLERK

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**Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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**No. 151.**

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**WRIGHT-BLODGETT COMPANY, LIMITED,**  
**(Hicks Case.)**

**versus**

**THE UNITED STATES OF AMERICA.**

---

**J. BLANC MONROE,**  
**MONTE M. LEMANN,**  
**A. R. MITCHELL,**  
Solicitors for Defendants.



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# **Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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**No. 151.**

---

**WRIGHT-BLODGETT COMPANY, LIMITED,**  
**(Hicks Case.)**

**versus**

**THE UNITED STATES OF AMERICA.**

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## **SYLLABUS.**

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.  
200 U. S., 601, **United States v. Clark.**  
200 U. S., 321, **U. S. v. Detroit Lumber Co.**
2. When the United States seeks to annul a patent on grounds of fraud in the entryman and notice in his vendee, the specific details of the fraud and of the notice must be set out in the bill, and the probata must conform to the allegata.  
121 U. S., 325, **Maxwell Land Grant Case.**  
172 Fed., 950, **U.S. v. Barber Lumber Co.**  
See other authorities page 17, *infra*.
3. It will not do for the United States to allege notice in one way and through named individuals, and to attempt to prove notice in another way and through other individuals. Same authorities.
4. When seeking to annul a patent under the seal and signature of the President, the United States to suc-

ceed must adduce that class of evidence which commands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.

**121 U. S., 381, Maxwell Land Grant Case.**

**123 U. S., 307, Colorado Coal Co. v. U. S., 133 U. S., 193.**

**197 U. S., 200, U. S. v. Stinson.**

5. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strong *de facto* presumption arises that the entryman's vendee was likewise deceived.
6. General statements that representatives of the defendant were in the general neighborhood at the time of the purchase are not sufficient to overcome this presumption particularly so when the improvements placed upon the land were such as to create in the casual observer the belief that the law was fully complied with.
 

**121 U. S., 381, Maxwell Land Grant Case, etc.**  
**200 U. S., 601, Clark Case.**
7. Nor will such general statements prevail when the record shows that defendants were in the habit of buying land on a general cruisers estimate without

special examination and that they purchased the particular land in controversy on the advice of counsel of high standing after examination of the abstract of title thereto.

U. S. R. S. 2301 does not require a commuter to prove that he has not agreed to sell his land before receiving his final receipt, this Court will not write such a provision into that Statute.

207 U. S., 455, *Williamson v. U. S.*

211 U. S., 507, *U. S. v. Biggs.*

193 U. S., 510, *Adams v. Church.*

211 U. S., 525, *U. S. v. Sullenberger.*

211 U. S., 523, *U. S. v. Freeman.*

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### STATEMENT.

This is a suit by the United States Government to annul and patent on the ground that the homestead entryman defrauded the Government, in that he did not reside on, improve and cultivate his land, as required by the homestead laws. The charge of fraud is strictly confined to the failure to reside upon, improve and cultivate. (R. p. 6.) The homestead entryman, **J. Hicks**, is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R. pp. 5 and 9) and is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt**. The bill proceeds to charge that the Wright-Blodgett Company Limited, had knowledge of the fraud in the entryman through its agents Boyd and Wasey. As this allegation will be the subject of discussion we reproduce from record (page 9) as follows:



“Your orator further charges and avers that at the time of said sale or pretended sale by the said defendant, Joe J. Hicks, to the said Wright-Blodgett Company, as aforesaid, and prior thereto, and up to and including the dates of making said false and fraudulent proof of the residence upon and the cultivation of said lands by the said defendant and his said witnesses, and of the issuance of said final receipt and said certificate of purchase, and since then, and up to the time of the issuance of said patent, **one James M. Boyd, and one Nat Wasey were,** and each of them was, an agent of the said Wright-Blodgett Company, and entrusted by it in the investigation, solicitation and purchase of lands for its use and benefit; **and that the said Wright-Blodgett Company, by and through its said agents, and each of them,** was well advised of, and knew, each and every detail of the acts and things done and committed, as hereinbefore set forth, and described, by the said defendant, Joe J. Hicks, and his said witnesses, for the unlawful and inequitable purpose of obtaining by such false and fraudulent methods the issuance of said patent; and your orator avers and charges that said Wright-Blodgett Company, **so well knowing and being advised of said false and fraudulent acts and doings on the part of the said defendant, Joe J. Hicks, and his said witnesses,** did, through its officers, whose names are to your orator unknown, and therefore not hereby given and set forth, did, assist, advise and encourage the commission of each and every of said acts and things, with the fraudulent purpose of obtaining title to said lands hereinbefore described.”

(Black-letters by present writer.)

the Wright-Blodgett Company, Limited, in its answer up that it purchased the land in good faith for value for the issuance to the entryman of his **final receipt**; if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited**, bought and recorded its purchase, it issued the patent. It points out that the fact that United States officials had accepted the commutation and other proofs of Hicks and had issued a final receipt for him, was sufficient to justify it in concluding that the mining law was complied with. This Court has in *Clark* held that "it was not bound to look for grounds for fraud." **Clark case; Detroit Lumber Case, 200 U. S.** It rests flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman. The case was confined strictly to the facts made by the pleadings. This appears from record, page 84, where the following agreement of counsel is produced:

"It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open Court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken."

And from record, page 17, where the following objections of the Wright-Blodgett Company, Limited, appear:

"Now comes the Wright-Blodgett Company, Limited, co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

"Wherefore, it now objects to the following testimony and evidence, and moves to strike out same:

"1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

"2. The bills having charged that the Wright-Blodgett Company Limited, had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy, and asks that same be stricken out.

"3. There is no allegation in the bills charging invalidity in the entries on the ground that the entryman sold or agreed to sell, prior to making final proofs, hence any attempt to show such a situation would be irrelevant and a variance, and is objected to as such, and motion made to strike same out.

"4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock, is objected to as irrelevant, and motion made to strike same out.

"It appearing that there are filed herein certain letters passing between the department of the

government and officials thereof and certain reports of special agents, and same are objected to by the Wright-Blodgett Company, Limited, on the ground:

- "1. As not the best evidence and hearsay.
- "2. As unsworn statements of persons not sworn as witnesses.
- "3. As *res inter alios acta*, irrelevant and immaterial."

The recent decisions of this tribunal leave no room for doubt as to the correctness of the appellants' contentions that the title of a purchaser in good faith, buying in the faith of a final receipt, is not affected by fraud in the entryman. These decisions are as follows:

**200 U. S., 601, United States v. Clark:**

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

"This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a *bona fide* purchaser, excepted as such from the invalidation of the patents by the act, and denied the material allegations of the bill. Voluminous evidence was

taken, and at the hearing the bill was dismissed by the Circuit Court. **125 Fed. Rep., 774.** That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry (**125 Fed. Rep., 776, 777**), and considering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, **but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark.** One Judge dissented on the ground that Clark knew enough to be put upon inquiry. **138 Fed. Rep., 294.** The United States then appealed to this Court.

"The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER'S RECEIPT,** but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. **Landes v. Brant, 10 How., 348; Bush v. Cooper, 18 How. 82; Myers v. Croft, 13 Wall., 291; United States v. Detroit Timber and Lumber Co., 200 U. S., 322.** See further, **Ayer v. Philadelphia and Boston Face Brick Co., 159 Massachusetts, 84.** But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch **AS HE DID NOT PURCHASE ON THE FAITH**

**OF THE PATENTS**, he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

**"WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals, **THAT THE ORIGINAL FRAUDS ARE MADE OUT**, although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co.**, 200 U. S., 321. The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS.** The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT.** It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a *bona fide* purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

\* \* \* \* \*

**"\* \* \*** There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He dealt as a purchaser with Cobban, and paid him the market price, and a substantial profit even on

the Government's calculation. **SO FAR AS ANY INFERENCE WAS TO BE DRAWN FROM THE NEARNESS OF THE RESPECTIVE DATES OF THE RECEIVER'S RECEIPTS, THE DEEDS OF THE ENTRYMEN TO COBBAN AND THE DEEDS OF COBBAN TO CLARK, IT WAS AS OPEN TO THE OFFICERS OF THE GOVERNMENT AS TO CLARK, IF INDEED HE KNEW ANYTHING ABOUT THOSE DATES, YET THEY SEEM TO HAVE SUSPECTED NOTHING, AND HE WAS ADVISED BY REPUTABLE COUNSEL THAT THE TITLES WERE GOOD, AND BOUGHT ONLY ON HIS ADVICE. \* \* \*** IT IS ARGUED, FURTHER, THAT CLARK'S INSPECTOR MUST HAVE GONE UPON THE LAND ABOUT THE TIME OF THE ENTRIES IN ORDER TO DO THE NECESSARY WORK OF ESTIMATING THE TIMBER. IF, FOR THE PURPOSE OF ARGUMENT, WE ASSUME THAT KNOWLEDGE OF A TIMBER INSPECTOR OF FACTS AFFECTING THE TITLE, WITH WHICH HE HAD NOTHING TO DO, WAS CHARGEABLE TO CLARK, STILL THE KNOWLEDGE IS A MERE GUESS. THERE WAS NOTHING PRESENT OR REQUIRED TO BE PRESENT ON THE FACE OF THE EARTH TO INDICATE WHEN THE ENTRY TOOK PLACE. WE CANNOT INFER FRAUD MERELY FROM MORE OR LESS FAMILIAR RELATIONS BETWEEN SOME OF CLARK'S AGENTS AND COBBAN. When suspicion is suggested it easily is entertained. But, bearing in mind, as was said in *United States v. Detroit Timber and Lumber Co.*, *supra*, that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF**

**DOUBT**, and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

**200 U. S., 321, U. S. v. Detroit Lumber Co.:**

The facts in this case are stated in the opinion as follows:

"The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.

"The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a **bona fide** purchaser from the former company."

The Court held, page 329, that the entrymen were in fraud. The sole questions then left was the good faith



vel non of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

“In their brief counsel for the Government say:

“‘We claim that the law as laid down in **Hawley v. Dillon**, that one who takes title before the issuance of patent, cannot claim to be a **bona fide** purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.’

“We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. **Jones v. Simpson**, 116 U. S., 609, 615. He is not bound to make a searching examination of all the account books of the vendor, nor to hunt for something to cast a suspicion upon the integrity of the title. \* \* \*

"In the light of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

"Now, what is the law controlling under these circumstances? Much reliance is placed by the Government on **Hawley v. Diller**, 178 U. S., 476, which, affirming prior cases, holds that an entryman under the Timber Act acquires only an equity, and that a purchaser from him cannot be regarded as a *bona fide* purchaser within the meaning of the act. • • •

"• • • It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman and will in due course issue to him a patent. He is the equitable owner of the land. It becomes subject to state taxation, and under the control of State laws in respect to conveyances, inheritances, etc. **Carroll v. Safford**, 3 How., 441; **Witherspoon v. Duncan**, 4 Wall. 210; **Simmons v. Wagner**, *supra*; **Winona and St. Peter Land Co. v. Minnesota**, 159 U. S., 526; **Cornelius v. Kessel**, 128 U. S., 456; **Hastings & Dakota R. R. Co. v. Whitney**, 132 U. S., 357; **Benson Mining Co. v. Alta Mining Co.**, 145 U. S. 428.

"Indeed, in some of the opinions of this Court, emphasizing the value of a receiver's receipt, there are expressions which seems to underestimate the significance of a patent. **Wisconsin Central R. R. Co. v. Price County**, 133 U. S., 496,

510; *Deseret Salt Co. v. Tarpey*, 142 U. S., 241, 251. \* \* \*

197 U. S., 200, *United States v. Stinson*:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and it is a good defense that the title has passed to a bona fide purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. \* \* \*

"*United States v. Burlington & Missouri River R. R. Co.*, 98 U. S., 334, 342; *Colorado Coal Co. v. United States*, *supra*, p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

"'But it is not such a fraud as prevents the passing of the legal title by the patents. It fol-

lows that to a bill in equity to cancel the patents upon these grounds alone the defense of a bona fide purchaser for value without notice is perfect.' *United States v. Marshall Mining Co.*, 129 U. S., 579, 589; *United States v. California, Etc., Land Co.*, 148 U. S., 3, 41; *United States v. Winoona, Etc., Railroad Co.*, 165 U. S., 463, 479."

### RESUME.

To resume, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the *Clark case* in these words:

"The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud." "The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect**. It is recognized in the act of March 3, 1891, that there may be a **bona fide purchaser** before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.**"

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as com-

plainant in the suit, to prove that the Wright-Blodgett Company, Limited, had actual notice of the alleged fraud in the entryman, and since the bill of complaint specifically charged such actual notice through, and only through J. M. Boyd and Nat Wasey, it was incumbent upon the Government, as complainant, to prove that **KNOWLEDGE THROUGH THE MEN NAMED AND NOT OTHERWISE**. An attempt to show such knowledge through any other person or persons would have been clearly inadmissible under the pleadings, and evidence in support of such an attempt should have been excluded from the record, if properly objected to. That timely and proper objection was made to such evidence has been shown. *supra*, this brief, page 6. The law on the subject is as follows:

**121 U. S., 325, Maxwell Land Grant Case:**

This was a suit by the United States to annul a grant of land. This Court said:

“Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside should be successful **only when the allegations on which this attempt is made are clearly stated and fully proved**. In this case the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill, and the decree of the Circuit Court dismissing it is affirmed.”

**172 Fed., 950, United States v. Barber Lumber Company:**

This was a suit by the United States to annul a patent for alleged fraud. The syllabus reads:

“In a suit of this character the bill must show specifically and in detail what the fraud consists of and how it was effected, and although the complainant may make out a case which under the circumstances would entitle it to the aid of the Court, yet if it is not the case made out in the bill it cannot recover.”

**102 U. S., 372, United States v. Atherton:**

“A bill in chancery to set aside a judgment or decree of a Court of competent jurisdiction, on the ground of fraud, must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the Court or the party injured was misled or imposed upon.

“A bill to set aside or annul a patent of the United States for public lands or to correct it, on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred.”

**Harrison v. Nixon, 9 Peters, 503:**

“Every bill must contain in itself sufficient matters of fact, *per se*, to maintain the case of the plaintiff, so that the same may be put in issue by the answer and established by the proofs. The proofs must be according to the allegations of the parties, and if the proofs go to matters not with-

in the allegations, the Court cannot judicially act upon them, as the ground for its decision, if the pleadings do not put them in contestation, the 'allegata' and the 'probata' must reciprocally meet and conform to each other."

**Boone v. Childs, 10 Peters, 209:**

"A party is not allowed to state one case in a bill or answer and make out a different one by proof; the 'allegata' and 'probata' must agree; the latter must support the former."

**Byers v. Swiget, 19 Howard, 309:**

"It is undoubtedly the rule in equity, as well as at law, that the proofs must correspond with the allegations, and that evidence irrelevant and inapplicable to the latter will be regarded as immaterial."

**Rubber Co. v. Goodyear, 9 Wallace, 793:**

"The proposition that the patent is fatally defective because it is impossible to make merchantable goods according to the instructions contained in the specifications, cannot be entertained. The answer contains no averment upon the subject. No such issue was tendered to the complainants and they have had no notice that such a defense was intended to be relied upon.

"In equity, the proof and allegations must correspond. The examination of the case by the Court is confined to the issues made by the pleadings. Proofs without the requisite allegations are as unavailing as such allegations would be without the proofs requisite to support them."

**United States v. Tichenor, 12 Fed., 425:**

"In the bill it is alleged that the patent was fraudulently obtained by means of false proofs, but of what the fraud consists, or wherein the proof was false, is not stated. Such an allegation is not sufficient on demurrer. The bill should have gone further and set forth the substance, at least, of the acts constituting the fraud, or stated wherein the proof was false."

**Phelps v. Elliott, 35 Fed., 461:**

"The rule is fundamental in equity pleading that every fact essential to the complainant's title to maintain the bill and obtain the relief, must be stated in the bill. Otherwise the defect will be fatal. In the language of the Court in **Harrison v. Nixon**, 9 Pet., 483, at page 503: 'Every bill must contain in itself a sufficient matter of fact *per se* to maintain the case of the plaintiff. The proofs must be according to the allegations of the parties, and if the proof go to matter not within the allegations, the Court cannot judicially act upon them as a ground for decision if the pleadings do not put them in contestation.' The 'allegata' and 'probata' must specifically meet and conform to each other, and it can no more succeed upon a case proved, but not alleged, than upon a case alleged but not proved \* \* \* a decree must be sustained by the allegations of the parties, as well as the proofs in the cause, and cannot be founded on a fact not put in issue in the pleadings."

**Platt v. Battier, 34 U. S., (9 Peters) 405:**

"Where a bill is filed to compel the conveyance of legal title to certain land, and the statute of



limitations is relied upon by defendant and no disability is alleged by complainant in his bill to take the case out of the statute, the question of disability, not being put in issue by the pleadings, the Court can consider evidence tending to show such disability."

**Blandy v. Griffith, Fed. Cases, No. 10,529:**

"The rule is well settled in equity that every material fact on either side must be set up in the pleadings, and, that the Court can no more consider what is proved, but not alleged, than what is alleged, but not proved."

**Grosvenor v. Dassiell, 25 U. S. App., 227, 27 L. R. A., 67:**

"A Court of equity will not grant a decree on another ground, where the bill charges actual fraud as the ground for relief, and the fraud is not proven.

**Eyre v. Patter, 56 U. S., 42 (15 Howard):**

"A bill in equity charging actual fraud is not maintained by evidence of constructive fraud."

**98 U. S., 69, United States v. Throckmorton:**

This was a bill in chancery brought by the United States Government to set aside a patent for lands. Dealing with the question of notice of an alleged fraud, the Court said:

"The substance of it is that Howard, one of the present defendants, then the law agent of the Government before the board, had from the papers in

some other suit, derived notice of the fraudulent character of the Micheltorena grant, and that he failed and neglected to inform the commissioners of the fact, or otherwise to defend the interest of the United States in the matter. If there had been a further allegation that Howard was then interested in the Richardson claim, or that Richardson had bribed him, or that from any corrupt motive he had betrayed the interest of the Government, the case would have come within the rule which authorizes relief; but nothing of the kind is alleged and the statement is a mere charge of carelessness or negligence on the part of the attorney for the Government, which would not have supported a motion for a new trial in a case of twenty years after it had been rendered.

**“Nor is there any such clear statement of the notice which Howard had as is necessary to establish his negligence.”**

Although the foregoing authorities leave no doubt as to its obligation so to do, complainant made no serious attempt to prove up its case, as alleged in its bill, and made no serious attempt to connect either J. M. Boyd or Nat Wasey with the Wright-Blodgett Company's purchase from J. J. Hicks of the land here in dispute. In fact, complainant attempted to show, over the objection of defendant, that the purchase of the land was effected, not through Boyd or Wasey at all, but through one Dickens. In support of this contention, Hicks, the entryman, was placed on the stand and swore (R., p. 126), that the sale to the Wright-Blodgett Company, Limited, was negotiated through Dickens.

The following admission appears in regard to Dickens (R., p. 164):

“It is admitted that both the government and the defendants in these cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him.”

The entryman, Hicks, further testified (R., pp. 167-8) as follows:

“66. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see if it was probably settled, or lived upon, or the homestead laws were complied with?

A. I do not know.

67. Do you know Nat Wasey?

A. Yes, sir; I did know him.

68. How long had you known Wasey at the time you commuted this land?

A. I think I met Mr. Wasey before I was elected Clerk of Court; about the time I began work for Mr. Winfree, in 1899.

**69. DID YOU EVER HAVE ANY TALKS WITH MR. WASEY REGARDING THIS LAND?**

A. **NO, SIR.**

70. What was Mr. Wasey's occupation?

A. I didn't know; I heard afterwards. Everybody seem to know he was buying land for Wright-Blodgett Company.

(Objected to on the ground of irrelevancy and on the ground that it was hearsay of the rankest character.)

71. Do you know where Nat Wasey lived?

A. No, sir. I can not say that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Wasey's activity and occupation for the Wright-Blodgett Company was?

A. Well, principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. **MY HOMESTEAD WAS A LITTLE OUT OF THE MAIN PART OF HIS TERRITORY, I THINK, THAT IS, WHERE HE BOUGHT THE PRINCIPAL PART OF LAND.**

74. Mr. Hicks, during the life of your entry before the sale of the land to Wright-Blodgett Company, was, or not, Nat Wasey frequently in the clerk's office at Leesville?

A. Up to that time, not very often.

75. Was he there occasionally?

A. Yes, sir.

(Objected to as leading.)

76. **WAS WASEY EVER AT YOUR HOUSE?**

A. **NO, SIR.**

77. **DO YOU KNOW FROM HIS ACTS OR WORDS THAT HE WAS AWARE OF YOUR LIVING THERE?**

A. **I DO NOT.**

78. Do you know whether he was aware that you were Clerk of Court at Leesville at the time he would file deeds and papers with you?

A. Yes, sir.

79. How far was this homestead of yours from Leesville?

A. In the neighborhood of 20 miles. About 20 or 25 miles.

80. Any railroad connecting the places?

A. No, sir.

81. Any trolley lines of any kind?

A. No, sir.

82. How long would it take to make a trip from your homestead to Leesville?

A. About five hours.

83. By what method of travel?

A. Buggy."

At the time the case was tried, Wasey was dead. (R. pp. 87 and 89.)

There is not one syllable in this record to show that he was aware that the Wright-Blodgett Company, Limited, was buying the land entered by Hicks, or had any connection with its purchase, or to show that he ever investigated it, or was on it, or near it. The foregoing quotation comprises all that Hicks had to say about Wasey. It certainly does not constitute a serious attempt to prove that the Wright-Blodgett Company knew through Wasey that Hicks had not complied with his obligations to the government.

The following excerpts from Hick's testimony are also important in this connection (R., pp. 132-133):

7. Mr. Hicks, had you or Mr. Allen any reason to believe that you had not complied with the law in regard to homesteading?

A. At the time we made our homestead proofs we were of the opinion that proofs were all right, as it was customary for the answers to go into the proof that claimant had not been absent six months at any one time. We did not know but what the proofs were all right until the matter was presented to the Court.

8. You honestly thought they were all right and acted in perfectly good faith?

A. Yes, sir.

Q. Have you had any talk with any government official or agent relative to this case?

A. Well, very little. I talked with Mr. Elsener some in a general way.

10. Did you give a written confession of judgment against you in this Hicks case?

A. I did.

11. Did you give that on any terms or conditions?

A. No, sir; nothing more than my understanding that this would possibly end the case.

12. Was it your understanding that there would be no effort toward prosecution by the United States?

A. Yes, sir; that the patents would likely be cancelled and that the Wright-Blodgett Company would have the privilege to lay script on this land or take it up any other way they might see fit.

13. And it was with that understanding on your part that this written confession of judgment was signed by you?

A. Yes, sir.

14. Now, Mr. Hicks, you are a man of considerable standing in your community and have been elected to various public offices, have you not?

A. Yes, sir.

15. No one in that community had any reason to suppose that at the time you were making your commutation proofs during 1901 that you, by word or deed, would affix your signature to any statement that was not thoroughly correct in every respect?

A. No, sir.

16. Your character in the community had been without stain of any kind?

A. Yes, sir.

“(It is admitted that Mr. Hicks was a man of unquestioned good standing in the community so far as is known to the United States attorney or his assistant, and that there has never been any other charge of any character whatever brought to the attention of the United States attorney except in the matter referred to in the examination of this witness by the counsel for the defendant.)”

As to Boyd, Hicks swears that he was a United States Commissioner, and that he, Hicks, applied to him “on his own volition” (R., p. 122) and asked him to look up a homestead for him. The record shows that Boyd was not in the employ of the Wright-Blodgett Company, Limited, either then or at any time prior to the purchase of the Hicks land by that company. The testimony of Foster clearly indicated that Jim Boyd was never in the employ of the Wright-Blodgett Company prior to 1904. He (Foster) had previously testified that he was in the employ of the company from 1901 to 1904, and on page 99 he testifies:

Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?

A. He was never in the employ of the company while I was out there.

We think, therefore, that we may safely say that the complainant's testimony affirmatively shows that neither Wasey nor Boyd was connected with the purchase of this land by the Wright-Blodgett Company, Limited, and fails

to show that the Wright-Blodgett Company, Limited, had any knowledge through them of the alleged fraud in the entryman. In further support of this statement, we desire to give a brief history of the advent of the Wright-Blodgett Company into Louisiana, and of its methods of doing business.

### **NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.**

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec., pp. 98-99.) It shows that when that company first went into Louisiana it secured from one of the best available firm of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by Ben Foster, a witness **for the complainant**, who swears as follows (Rec., p. 97):

Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?



A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.

Q. Who are J. D. Lacey & Company?

A. Real estate man, with an office in New Orleans.

Q. Do they or do they not make a business of making these timber cruises or estimates?

A. It is their principal business, or was, at that time.

Q. How do they stand in the business and how are their estimates considered by timber people?

A. Of the best.

Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without any further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 98.)

Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?

A. That is the usual case, the usual method of doing business.

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so

high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no attention to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 107):

Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.

Q. (9) Do you make any statement as to the condition of the house?

A. None whatever; I do not.

Q. (10) Do you pay any particular attention to the condition of the house?

A. Not to the house, simply as to how its land is cleared.

Q. (11) You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

Q. That is the custom observed among all timber estimators?

A. Yes.

(Page 108):

Q. (8) In going upon these lands, would you make any investigation for the purpose of ascer-

taining whether the entryman had complied with the laws so as to entitle them to a final receipt?

A. I never did.

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homesteads would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the **final receipt**, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that the Wright-Blodgett Company, Limited, **followed that custom**, for Foster tells us that he never made such an investigation, and at record, page 81, it appears that he was for some years an employee of the Wright-Blodgett Company, Limited, although at the time he gave this testimony he was employed by other persons.

The testimony further is that the Wright-Blodgett Company, Limited, defendants herein, made it a custom

to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana, (Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

**Wingate** testified (Tr., p. 161):

Q. You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; they were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.

Q. They did not purchase any lands until Pujo & Moss approved the title?

A. That was my understanding.

**Foster** testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 106):

Q. At the time you first went into the office, however, the custom was to submit all titles,

whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?

A. Yes, sir; all titles.

Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?

A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

C. D. Moss testified (Rec., p. 111):

Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?

A. Yes, sir; my recollection is that the employment began about 1899.

Q. What was the nature of that employment?

A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.

Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?

A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands

were purchased it was the rule for the abstracts of title to be brought back to the office, after the deeds were acquired from the different owners, and these deeds were carried on the abstract, so that our opinions would show our opinion of the titles in the Wright-Blodgett Company; in some cases, I recall, there were two written opinions.

(Rec., p. 114):

Q. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett Company?

A. I think all but the first transaction. My recollection is that when the company first organized it purchased a very large tract of land from parties in Chicago, the Fairbanks people, and according to the best of my recollection that purchase was made before Pujo & Moss ever saw the abstract of title.

Q. In cases where the Wright-Blodgett Company would purchase direct from entrymen or Government land, would you be called upon to pass upon such title where there was no transfer nor intervening transaction?

A. That is my recollection, that the abstract would be brought in either before or after issuance of the patent; the abstract would always be brought in showing the issuance of the patent, or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, written opinions would be given, and then after the deed was acquired in the name of the Wright-Blodgett Company, either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards,

Mr. Kelley explained to us that he wanted opinions from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that in the event of sale subsequently these written opinions could be used.

(Page 114):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 116):

Q. (30) Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?

A. No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.

(Page 118):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to

the Assistant District Attorney, you explained the attitude of the Calcasieu bar prior to the coming of the Government inspectors into Calcasieu Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 117 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified, on page 118, that his firm had actually passed upon the title here in dispute, and the written opinion of the firm approving the title is in evidence. (Rec., p. 32.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they



bought it on the faith of the general estimate made by J. D. Lacey & Company, without making any special investigation of the land. It appears, further, that the attorneys for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases**, where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the Wright-Blodgett Company's situation? They knew from the opinion of Pujo & Moss that the title was good. They knew from the estimate made by J. D. Lacey & Company exactly what timber and what property they were buying. There was no occasion for further investigation, a fact which the foregoing quotation from Wingate's testimony emphasizes, he having stated that his instructions were to send abstracts to Pujo & Moss, and if they approved the titles, the draft would be paid without further todo. It further appears that even had a special investigation been made, that investigation would have been made with a view solely to substantiating the statements made in the estimate of J. D. Lacey & Company as to the amount of timber standing on the land. And it appears further that the only information secured from such an additional investigation by the Wright-Blodgett Company, Limited,

would have been a timber estimator's report, which report would have contained no information on the subject of compliance **vel non** by the homesteader with the Homestead law. On this subject **Foster**, page 109, Question 8, testified as follows:

Q. In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the law so as to entitle him to a final receipt?

A. I never did.

The foregoing is particularly important in this case, for the reason that the evidence adduced conclusively shows that all of the outward signs of compliance with the homestead laws were taken by Mr. Hicks, the entryman. There was nothing to arouse suspicion, for the reason that the evidence clearly indicates that Hicks had worked on the land and kept in order a good house; that he had outbuildings around it; that he planted, or had planted, a crop, and surrounded his clearing with a fence; there were fruit trees on the homestead and the whole place was kept in good repair. The testimony on that subject is as follows (R., p. 122):

Q-17. What steps did you take to perfect that entry?

A. After making the entry, within a short time I hired the improvements put on it—had a house built, rails split, and about two acres of land cleared.

(Page 123):

Q-29. How was this house furnished that you had on the land?

A. I don't remember so long; not much; a chair or two, and a bedstead.

Q-30. Any cooking stove?

A. No, sir. What cooking we did was in a fire-place—old style.

Q-31. What crop did you raise on this land?

A. I raised one crop.

Q-32. Did you raise it yourself or hire it raised?

A. Hired it done. Raised corn and some peas with the corn; also had some fruit trees, probably half a dozen or more.

Hicks swore further (p. 129):

Q-3. If I undertsand correctly, this house was known as a double-pen house, and was built directly on the line between your homestead and W. O. Allen's homestead?

A. Yes, sir.

Q-4. W. O. Allen lived in part of that house during the life of the entry?

A. Yes, sir.

Q-5. W. O. Allen is your brother-in-law?

A. Yes, sir.

Q-6. During that time there was a certain acreage of land fenced in and cultivated?

A. Yes, sir.

Q-7. I suppose you had a well and a hog-pen?

A. Yes, sir. We got good water from the spring.

(Page 132):

Q-7: Mr. Hicks, was the crop either on your place or on the place of Mr. Allen cultivated in a manner in which a farmer usually cultivates his crop?

A. Well, about, an average for that part of the country. I hired mine cultivated. Had a two-bit pony and a two-bit plow.

(Page 132):

Q-7. Mr. Hicks, had you or Mr. Allen any reason to believe that you had not complied with the law in regard to homesteading?

A. At the time we made our homestead proofs we were of the opinion that proofs were all right, as it was customary for the answers to go into the proof that claimant had not been absent six months at any one time. We did not not know but what the proofs were all right until the matter was presented to the Court.

Q-8. You honestly thought they were all right and acted in perfectly good faith?

A. Yes, sir.

It thus appears that Hicks did everything in the way of making the improvements required by the statutes. It does not appear that either Wasey or Boyd were ever on the place during the life of the homestead; but even had they been on the place, they would have seen a house, fences, outbuildings, a crop, and fruit trees, all apparently kept up and inhabited, and they would have so reported to their principal. There was nothing in

the situation to arouse the suspicion of a purchaser that Hicks, whom the Government admits was a reputable citizen, had perjured himself in swearing that he lived on the place. Now must it be forgotten that there is no showing that any one representing the Wright-Blodgett Company ever was actually on the land.

With all of these improvements made and kept up on the land, it is quite evident that the ordinary timber cruiser passing over the land and observing a house, fences, outbuildings, a crop, fruit trees, etc., would have nothing to put him on notice that the homesteader had not fully complied with the law; and this is particularly true when we bear in mind the fact that timber cruisers pay no particular attention to improvements. To this situation the following language used by this Court in the Clark case is peculiarly appropriate:

**200 U. S., 601, U. S. v. Clark:**

“It is argued, further, that Clark’s inspector must have gone upon the land about the time of the entries, in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of the timber inspector of facts affecting the titles with which he had nothing to do was chargeable to Clark, still the knowledge is a mere guess; there is nothing precept or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark’s agents and Cobba.”

**HICKS ENTRY AND FINAL PROOF WAS IN STRICT  
ACCORDANCE WITH THE FORM PRESCRIBED  
BY LAW AND DECEIVED THE TRAINED  
GOVERNMENT EXPERTS.**

Not only was all of the foregoing true, but the evidence shows that Hicks made his final proof in due form, swearing, and having his witnesses swear, that he had established his actual residence on the land, had cultivated two acres, and had put improvements thereon. His affidavit appears (R., p. 39) and is as follows:

"I, Joe J. Hicks, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 7382, made upon the N. E.  $\frac{1}{4}$  section eight (8), township two (2) North, Range 5 W., La. Mer., do solemnly swear that I made settlement upon said land on the . . . . . day of March 1899, and that since such date, to-wit: on the 11th day of June, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated about two acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

"I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except. . . .

**"Joe J. Hicks.**

The statements made in this affidavit were fully substantiated by the witnesses M. C. Bass and W. J. Bass (R., pp. 41, 43). Neither of these men were placed on the stand by the Government, which contented itself with offering their depositions made in support of the homestead entry (R., pp. 41, 43). This proof was so satisfactory on its face that the Government after issuing the final receipt to Hicks on July 6, 1901, proceeded (after presumably making further investigation in order to ascertain that the entry was correct in all respects) to issue a patent eight months later, to-wit: on April 1, 1902. This patent is the patent now assailed. It is a noteworthy fact that this patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded. (R., p. 25.)

This proof, made by Hicks in support of his application for patent, was apparently so full and correct that as the bill says (R., p. 8):

“And that the said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in the said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements, so falsely and fraudulently given and made by the said defendant and his said witnesses, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually made settlement and established his residence upon said tract of land, and had cultivated the same in the manner and to the extent,

and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said lands, and the issuance of the United States patent thereof by the said officers of the United States, as hereinbefore set forth, and the delivering of the said patent to the defendant."

Our natural inquiry is if the proof was so full as to deceive the skilled experts of the United States Land Office, whose duty it is to investigate and to hunt for grounds of doubt, why should the Court infer that it did not equally deceive the Wright-Blodgett Company, Limited, upon whom no such duty was imposed? This record gives no satisfactory answer to this inquiry. On the contrary, it appears that there was nothing in the way in which the Wright-Blodgett Company, Limited, went about making its purchases, and nothing in the way in which Joe J. Hicks, the entryman, went about making and commuting his entry, which could, or should, under normal circumstances, have placed the Wright-Blodgett Company, Limited, upon notice of any alleged fraud in the entryman, Joe J. Hicks, and there is no proof in this record that this purchase was made other than in the normal manner.

This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been



emphatic and its decisions have been uniform. Some of the language used is as follows:

**121 U. S. 381, Maxwell Land Grant Case:**

“We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon

the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

**123 U. S., 307, Colorado Coal & Iron Co. v. United States:**

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained, from the Land Office, or the officers who had witnessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the Government to produce so much of this further evidence as could be obtained, and that, in its absence, the United States had not made all the proof

of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

**133 U. S., 193, U. S. v. Hancock:**

The syllabus reads:

"Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for \$1500.00, though it may be the subject of criticism, is not the clear, convincing and unambiguous proof of fraud which is required to set aside a patent of public land."

**197 U. S., 200, United States v. Stinson:**

The syllabus reads:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of

themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a **bona fide** purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties."

A reading of this record will, we submit, convince this Court that there is no such clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright Blodgett Company, Limited.

Complainant fully realized that it had signally failed to make out its case as stated in its bill, and as a sort of last hope, they made an effort to show that Hicks contracted to sell this land to the Wright-Blodgett Company before he received his final receipt. This effort to prove something not set up in the pleadings was promptly objected to, and was, of course, inadmissible. (See authorities at pages 16, et seq. this brief.) Due objection was made to it. We now insist upon the objec-

tion, and ask that the whole matter be stricken out. The claim was not proven to begin with, and even if it had been it would have served no useful purpose, for,

**A HOMESTEAD ENTRYMAN WHO AFTERWARDS COMMUTES HIS ENTRY, CANNOT BE COMPELLED TO SWEAR IN MAKING COMMUTATION PROOF THAT HE HAS NOT PREVIOUSLY AGREED TO SELL HIS LAND; BUT, ON THE CONTRARY, HAS A RIGHT TO SELL HIS LAND BEFORE HE MAKES HIS COMMUTATION PROOF.**

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U. S. R. S., 2290; 6 Fed. Stat. An., 290, provides that when the homestead entryman makes his **original entry** he must swear "that he or she does not apply to enter the same for the purpose of speculation, but in good faith, to obtain a home for himself or herself; and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation, or syndicate whatsoever, by which the title which he or she might acquire from the Government should enure in whole or in part of the benefit of any person except himself or herself."

The commutation provision, U. S. R. S., 2301; 6 Fed. Stat. An., 317, reads:

**"NOTHING IN THIS CHAPTER SHALL BE SO CONSTRUED AS TO PREVENT** any person who shall hereafter avail himself of

the benefits of Section 2289 from paying the minimum price for the quantity of land so entered, at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor **upon making proof of settlement and of residence and cultivation for such period of fourteen months.** And the provisions of this section shall not apply to lands on the ceded portion, etc., but shall not relieve any settler from any payments now required by law."

Observe how very similar these provisions are to the Timber and Stone Act. The summary of the provisions of that act are to be found in the case of **Williamson v. United States**, 207 U. S., 455; and Mr. Justice White, in passing on a similar question in regard to that act, used the following language, (page 458 of that opinion):

"To do so it becomes necessary to determine whether the Statute requires an applicant after he has made his preliminary sworn statement concerning the **bona fides** of his application, and the absence of any contract or agreement in respect to the title, to additionally swear to such facts after notice of his application has been published, and the time has arrived for final action on the application. And this, of course, involves deciding whether the regulation of the commissioner exacting such additional statement at the time of final hearing is valid. The inquiry concerns only the second and third sections of the act. Turning to the second section, it will be seen that it requires the applicant to make a sworn statement giving many particulars concerning the land, its usefulness for cultivation, its being uninhabited, the absence of mineral, etc., followed by the requirement that **THE APPLICANT SHALL DE-**

**CLARE THAT THE ENTRY IS NOT MADE FOR PURPOSES OF SPECULATION, BUT IN GOOD FAITH, AND THAT HE INTENDS TO APPROPRIATE THE LAND TO HIS OWN EXCLUSIVE USE AND BENEFIT, AND THAT NO AGREEMENT HAS BEEN MADE, DIRECTLY OR INDIRECTLY,** with any person or persons whatsoever by which the title to be acquired from the Government shall enure in whole or in part to any person except the applicant. And the section concludes by causing any false statement made in the application to constitute the crime of perjury.

Examining the third section it will be seen that it provides that upon filing said statement as provided in the second section, it shall be the duty of the local land officer to post a notice of the application in his office, for sixty days, furnish the applicant with a copy of such notice for publication at the expense of the applicant, in the nearest newspaper, for sixty days, and when such period has expired, on proof of the publication and of certain facts which the statute expressly enumerates, the applicant shall, upon payment of the requisite charge, in the absence of a contest, be entitled to a patent for the land. Examining the items which the statute requires the applicant to make proof of after showing publication, it is apparent that while some of the things referred to in the prior section, and which are required to be stated in the preliminary proof are reiterated, **ALL EQUIREMENT IS OMITTED OF ANY STATEMENT REGARDING A SPECULATIVE PURPOSE ON THE PART OF THE APPLICANT, HIS BONA FIDES AND HIS INTENTION TO ACQUIRE FOR HIM.**

**SELF ALONE.** When the context of the Statute is thus brought to view, we are of the opinion that it cannot possibly be held without making by judicial legislation a new law, that the statute exacts from the applicant a reiteration at the final hearing of the declaration concerning his purpose in acquiring title to the land, since to do so would be to construe the statute as including in the final hearing that which the very terms of the statute manifest were intended to be excluded therefrom. We say this because, as a third section re-enacts in the final application a reiteration of some of the requirements concerning the character of the land, made necessary in the first application, and omits the requirements as to the *bona fides*, etc., of the applicant, it follows under the elementary rule that the inclusion of one is the exclusion of the other; that the re-enacting of a portion only of the requirement was equivalent to an express declaration by Congress that the remaining requirement should not be exacted at the final proof.

. . . . .

“Indeed, we cannot perceive how, under the statute, if an applicant has in good faith complied with the requirements of the second section of the act, and pending the publication of notice has contracted to convey, after patent his rights in the land, his doing so could operate to forfeit his right. These conclusions are directly sustained by a recent ruling in *Adams v. Church*, 193 U. S., 510, construing the Timber Culture Act. Under that law an applicant for entry was obliged, among other things, in making his application, to swear to his good faith and to the absence of speculative purpose, in the exact words of the statute now



under consideration. But in the Timber Culture Act, as in the Timber and Stone Act, the requirement was not reimposed in respect to final proof. In the cited case the entryman who had complied with the statute in making his application had between the date of the application and the making of final proof, disposed of his right, and the question was whether by so doing he had forfeited his claim. In deciding adversely to the contention that he had, the Court said, on page 515:

**“ ‘BUT THE LAW DOES NOT REQUIRE AFFIDAVIT BEFORE FINAL CERTIFICATE THAT NO INTEREST IN THE LAND HAS BEEN SOLD,** we perceive no reason why such contract as was found to exist by the Supreme Court of Oregon would vitiate the agreement to convey after the certificate is granted and the patent issued. If the entryman has complied with the statute, and made the entry in good faith, in accordance with the terms of the law and the oath required of him upon making such entry, and has done nothing inconsistent with the terms of the law, we find nothing in the fact that during his term of occupancy he has agreed to convey an interest to be conveyed after patent issued, which will defeat his claim and forfeit the right acquired by planting trees and complying with the terms of the law. Had Congress intended such results to follow from the alienation of an interest after entry in good faith, it would have so declared in the law.’ ”

**37 Fed., 666, United States v. Howard:**

“Perjury cannot be predicated on an oath to immaterial and irrelevant statements, no matter how

false such statements may be. Thus, where a homestead entryman on his application for commutation of his homestead under this section makes the affidavit required of an original applicant for homestead entry, but not required of an applicant for the commutation of such entry, the oath as to immaterial and irrelevant matter and cannot support a conviction for perjury."

In the course of the opinion the Court said:

"If the homestead settler does not wish to remain five years on the land, the law permits him to pay for it with cash, and to obtain a patent therefor from the Government. In other words, he may abandon his rights under the homestead law and avail himself of the benefits of the law granting preemption rights. See **Secs. 2301 and 2259 R. S.** When this is done it is called a commuted homestead entry."

**72 Fed., 601.** The Court said:

"There is a wide distinction between the cancellation by the Land Department of a homestead entry and a refusal by the same authority of an application by the settler for patent before the expiration of the homestead limit of five years."

**211 U. S., 507, United States v. Biggs:**

"The timber and Stone Act, as amended, while prohibiting the entryman from entering ostensibly for himself, but in reality for another, does not prohibit him from selling his claim to another after application and before final action. **Williamson v. United States, 207 U. S., 425,**"

(The Court discusses the **Williamson case**, and affirms it in full.)

See, also **United States v. Sullenberger**, 211 U. S., 523; **United States v. Freeman**, 211 U. S., 525; **Adams v. Church**, 193 U. S., 510, to the same effect.

We are aware that the Government will contend that the Williams and Adams cases were virtually overruled in the **Bailey-Sanders case**, 228 U. S., 603, but we cannot agree with that contention. In the Bailey case **no patent ever issued**. There the entry was disallowed by the Land Department before a patent issued and the Court was asked to upset the actions of the Land Department. It declined to do so. Here the Land Department acted favorably on the entry and issued patent. We believe the Court will again decline to upset its findings. Besides this, even if the case were incapable of differentiation, we believe that the doctrine enunciated by Chief Justice White in the Williamson case and affirmed in the Biggs case is the correct interpretation of the Statute, and should prevail.

It is perfectly apparent, therefore, that there was no contract or agreement of any kind on the part of Dickens to purchase the property prior to the issuance of the receipt, must less was there an agreement on the part of the Wright-Blodgett Company, who had nothing to do with the transaction. And so we submit that this attempt of the Government to annul a patent now in the hands of a **bona fide** third holder, must be dismissed.

It must not be forgotten that a patent is the highest form of evidence as against the Government, and that

the Supreme Court has repeatedly held that it will not annul a patent unless the evidence is absolutely conclusive and makes the annulment thereof imperative. We submit that no such case is here presented. It is not only not shown that the Wright-Blodgett Company was in bad faith in purchasing this land, but the Wright-Blodgett Company has succeeded in showing that it was in good faith in doing so. The testimony is that they had a large timber estimate of the entire tract, and that it was the custom of timber purchasers to buy on the faith of such estimates. There is no testimony to show that any special investigation of this particular contract was shown, and there is affirmative testimony to show that before making the purchase the titles to the land were tendered by the Wright-Blodgett Company to Messrs. Pujo & Moss, one of the best known law firms in the State of Louisiana, and that that firm advised them that in all cases where final receipt had issued, they were perfectly safe in accepting the title without further investigation.

Under the circumstances, we submit that the good faith of the Wright-Blodgett Company is beyond question, and that against it the suit to annul the patent must be dismissed. We ask for judgment accordingly.

J. BLANC MONROE,

MONTE M. LEMANN,

A. R. MITCHELL,

Solicitors for Defendants.

FILED

JAN 23 1915

JAMES D. MAHER  
CLERK

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1914.**

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**No. 151.**

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WRIGHT-BLODGETT CO., LTD., APPELLANT,

*v.s.*

THE UNITED STATES, APPELLEE.

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**SUPPLEMENTAL BRIEF FOR WRIGHT-BLODGETT  
CO., LTD.**

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J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHEL,  
*Solicitors.*



# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

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**No. 151.**

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WRIGHT-BLODGETT CO., LTD., APPELLANT,

*vs.*

THE UNITED STATES, APPELLEE.

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**SUPPLEMENTAL BRIEF FOR WRIGHT-BLODGETT  
CO., LTD.**

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## I.

### *No Concurrent Findings of Two Courts.*

We have no desire to combat the principle that this court will not disturb, unless clearly erroneous, the concurrent findings of facts of the two courts below. That principle, however, has no necessary application to the case at bar for the reason that the district court *made no finding of facts* whatever. It is true that it decided the case in favor of the appellant, but whether its judgment was predicated upon

the facts found by the Circuit Court of Appeals or upon other facts does not appear from the record.

It might be said that the district court could not have found any other facts if it desired to decide the case for complainant. Complainant appellee, however, demolishes this argument when he suggests that the entry was fraudulent not only because the entryman failed to reside upon or improve the land (the reason given in the bill and found by the Circuit Court of Appeals), but also because he contracted to alienate the land before receiving his final receipt. If there be ground for this contention by the appellee here, it may well have been the ground upon which the district judge predicated his decision. In that case there would not be concurrent findings of the two courts below, but different findings, which would leave this court entirely untrammelled in its investigation of the question.

Moreover, we contend that each of the findings below would have been clearly erroneous.

## II.

The brief of the appellee, pages 14 to 20, which deals with the Hicks case, and which we have no hesitation in saying presents the Government's case as clearly and as favorably as the record will allow, only brings into a stronger light the *variance* between the complainant's *probata* and *allegata*, which was objected to in our original brief. The allegation of the bill is that the Wright-Blodgett Co., Ltd., had knowledge of the fraud through Nat. Wazey and J. M. Boyd. Almost the entire brief of appellee is devoted to showing that that knowledge was acquired through another person, Didaus. As to the Government's right to thus bring its attack over the objection of defendant, see original brief, pp. 16 to 21.

In so far as Wazey is concerned, the witness Hicks, whose testimony is relied on, is quoted by appellee as saying:



"69. Did you ever have any talks with Mr. Wazey regarding this land?

A. No, sir.

70. What was Mr. Wazey's occupation?

A. I did not know. I heard afterwards. Everybody seemed to know he was buying land for the Wright-Blodgett Co.

71. Do you know where Nat. Wazey lived?

A. No, sir. I can not say that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Wazey's activity and occupation for the Wright-Blodgett Co. was?

A. Well principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory. I think that is where he bought the principal part of land."

The witness then testifies that up to the time of the sale by him to the Wright-Blodgett Co. Wazey was "not very often" in the clerk's office; he then swears:

"Was Wazey ever at your house?

A. No, sir.

77. Do you know from any acts or words of his that he was aware of your living there?

A. I do not.

78. Do you know whether he was aware that you were clerk of court at Leesville at the time he would file deeds and papers?

A. Yes, sir."

From which we suppose the court will be asked to draw that inference that

a. Wazey filed deeds and papers before the purchase.

b. That Wazey would presume that the clerk of court lived at the county seat.

c. That as a matter of fact the court was obliged to live at the county seat.

The record is not silent on these subjects, but it does not lead to the inferences suggested. It reads in part as follows (we quote the testimony of one of complainant's own witnesses) R., p. 68:

"68. How many terms of court do they usually have in the parish of Vernon every year?

A. Why I think that their terms—I do not remember really what number of terms of court they have. I know they have two criminal terms.

Q. Now during the time you have mentioned, 1900 and 1901, did Mr. Hicks have any assistance in the clerk's office?

A. Yes, sir.

Q. Was it necessary for Mr. Hicks to be in his office at all times to keep up with the business of that office?

A. *I do not think it was.*

Q. Is it not a fact that he was frequently absent from the town of Leesville at different times during that time?

A. He was absent on different occasions.

Q. You do not know of your own personal knowledge whether or not Mr. Hicks spent any portion of his time on his homestead?

A. No, sir. I know that he was there with his family on one or two occasions. I do not remember distinctly. I understood he spent part of his time on his homestead.

\* \* \* (Objection by complainant.)

Q. About how many days were they actually holding court during the year in Leesville?

A. The criminal court lasts usually about two weeks.

Q. They hold court twice for a period of two weeks each time?

A. Yes, sir.

Q. And during these terms Mr. Hicks has deputy clerks there?

A. *Yes, sir. In fact during his first term Alfred was equally interested with him in the division of the office and acted as chief deputy."*

The record shows (R., 67) that his first term began in April, 1900. It also shows that the clerk's office concerns itself with civil terms of court as well as criminal, and that it is open throughout the year as a record office, but it does not show that Hicks was required to be there more than a small proportion of the time. It does affirmatively show that Wazey was never at the Hicks house, and, as far as Hicks knew, did not know where he lived.

Surely this is not such evidence as this court had in mind when it said in the Maxwell Land Grant case, 121 U. S., 381:

"The testimony on which this is done must be clear, unequivocal and convincing and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt."

And equally certain it is that if the Circuit Court of Appeals held this evidence to be such evidence as that canon of proof requires that august tribunal's conclusion was clearly erroneous.

Respectfully submitted,

J. BLANC MONROÉ,  
MONTE M. LEMANN,  
A. R. MITCHEL,  
*Solicitors.*

January, 1915.

# In the Supreme Court of the United States.

OCTOBER TERM, 1914.

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| WRIGHT-BLODGETT COMPANY (Ltd.),<br>appellant,<br>v.<br>THE UNITED STATES. | }<br>No. 151. |
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| WRIGHT-BLODGETT COMPANY (Ltd.),<br>appellant,<br>v.<br>THE UNITED STATES. | }<br>No. 152. |
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| WRIGHT-BLODGETT COMPANY (Ltd.),<br>appellant,<br>v.<br>THE UNITED STATES. | }<br>No. 154. |
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| WRIGHT-BLODGETT COMPANY (Ltd.),<br>appellant,<br>v.<br>THE UNITED STATES. | }<br>No. 155. |
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| WRIGHT-BLODGETT COMPANY (Ltd.),<br>appellant,<br>v.<br>THE UNITED STATES. | }<br>No. 156. |
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APPEALS FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT.

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## MOTION TO CONSOLIDATE.

The Solicitor General moves that the above-entitled cases be consolidated and heard together when the last, No. 156, is reached on the calendar.

These are five suits in equity brought by the United States in the Western District of Louisiana to cancel patents issued under the homestead laws. Decrees canceling the patents were rendered by the District Court and separate appeals were taken by the appellant here to the Circuit Court of Appeals for the Fifth Circuit, where the decrees of the lower court were affirmed in one brief opinion, as follows:

The above entitled and numbered cases are separate appeals from the separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that Wright-Blodgett & Company, vendees of the alleged homesteaders, are charged through their active agents on the ground with knowledge of the fraud.

The decree in each of the above-mentioned cases is affirmed. (R. in No. 151, p. 176.)

Of the five homestead entries involved four were made in the same township and the other in the adjoining township on the north. The entries were commuted about the same time, and all the lands were conveyed to appellant very soon after the proofs were made. The same testimony of several of the witnesses relates to more than one case and in some instances the testimony of a single witness relates to all of the five cases. The questions involved, therefore, are similar, where they are not identical, and it is believed that the convenience of

both the court and counsel will be served by the consolidation of the causes.

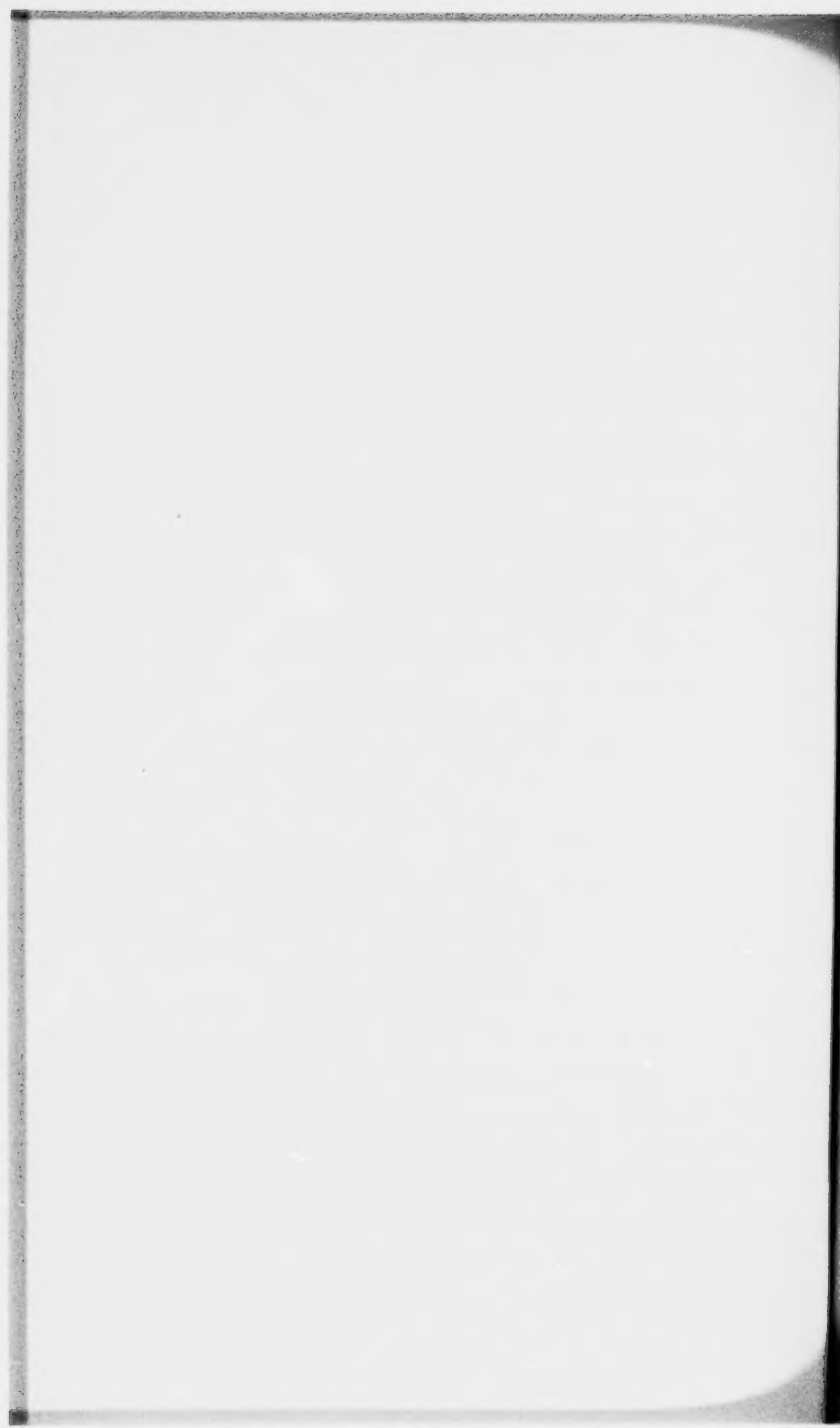
A comparison of the four briefs already filed by appellant's counsel shows that they are substantially identical, a large portion of each being in fact a verbatim copy of the others.

Notice of this motion has been served on counsel for the appellant.

JOHN W. DAVIS,  
*Solicitor General.*

JANUARY, 1915.

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OFFICE SUPREME COURT, U. S.

FILED

JAN 13 1915

JAMES D. MAHER

CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

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**No. 151.**

WRIGHT-BLODGETT CO., LTD.,

*vs.*

UNITED STATES OF AMERICA.

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**No. 152.**

WRIGHT-BLODGETT CO., LTD.,

*vs.*

UNITED STATES OF AMERICA.

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**No. 154.**

WRIGHT-BLODGETT CO., LTD.,

*vs.*

UNITED STATES OF AMERICA.

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**No. 155.**

WRIGHT-BLODGETT CO., LTD.,

*vs.*

UNITED STATES OF AMERICA.



**No. 156.**

WRIGHT-BLODGETT CO., LTD.,

*vs.*UNITED STATES OF AMERICA.

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Comes now Wright-Blodgett Co., Ltd., one of the defendants and appellant in the above entitled and numbered causes, and opposes the motion to consolidate same, filed by the United States of America, and for cause of such opposition says:

1. These cases are five separate and distinct suits to annul five separate and distinct land patents, issued at five separate and distinct times, under five separate and distinct circumstances, to five different entrymen. The facts in each case are materially different, and while it is true that certain testimony appears in all five of the cases, it is also true that in each record there is a material amount of testimony which does not appear in any of the other records.

2. Suit No. 151 is a suit by the United States against Joe J. Hicks and the Wright-Blodgett Co., Ltd.; suit No. 152 is a suit against Walter O. Allen and the Wright-Blodgett Co., Ltd.; suit No. 154 is a suit against Samuel Aiken, Jr., and the Wright-Blodgett Co., Ltd.; suit No. 155 is a suit against E. Z. Boyd and the Wright-Blodgett Co., Ltd.; suit No. 156 is a suit against Samuel Bryers and the Wright-Blodgett Co., Ltd.

3. While it is true that in each of these cases the general duties and obligations imposed upon the Government in suits brought to set aside patents issued under section 2301

of the Revised Statutes are at issue, it is also true that appellant relies in the different cases on other and different points of law.

4. If these five cases be all argued together the labor of the court will, we submit, be actually increased instead of diminished, for the reason that instead of having each case separated from the others and its salient features pointed out separately and apart from the others, the court will have the facts in all five cases presented in a confused mass. When the time comes to decide the cases it will be found a matter of extra and unnecessary annoyance to untangle the facts in each separate case.

5. These cases are separate cases. The records are separate records. Individually they may make up one case against the Wright-Blodgett Co.; collectively, each bolstering the other, they may make up another and stronger case against that company. Such a change in position should not be forced upon that company at this stage of the proceedings.

Respectfully submitted,

WRIGHT-BLODGETT CO., LTD.,  
By J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHEL,  
*Solicitors for Appellant.*

JANUARY, 1915.

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# **Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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**No.**

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**WRIGHT-BLODGETT COMPANY, LIMITED,**

**(Allen Case)**

**versus**

**THE UNITED STATES OF AMERICA.**

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## **SYLLABUS.**

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.

**200 U. S., 601, United States v. Clark.**

**200 U. S., 321, U. S. v. Detroit Lumber Co.**

2. When the United States seeks to annul a patent on grounds of fraud in the entryman and notice in his vendee, the specific details of the fraud and of the notice must be set out in the bill, and the probata must conform to the allegata.

**121 U. S., 325, Maxwell Land Grant Case.**

**172 Fed., 950, U.S. v. Barber Lumber Co.**

**See other authorities page 17, infra.**

3. It will not do for the United States to allege notice in one way and through named individuals, and to attempt to prove notice in another way and through other individuals. Same authorities.
4. When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which commands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.  
     121 U. S., 381, *Maxwell Land Grant Case*.  
     123 U. S., 307, *Colorado Coal Co. v. U. S.*, 133 U. S., 193.  
     197 U. S., 200, *U. S. v. Stinson*.
5. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strange *de facto* presumption arises that the entryman's vendee was likewise deceived.
6. General statements that representatives of the defendant were in the general neighborhood at the time of the purchase are not sufficient to overcome this presumption particularly so when the improvements placed upon the land were such as to create

in the casual observer the belief that the law was fully complied with.

**121 U. S., 381, Maxwell Land Grant Case, etc.**

**200 U. S., 601, Clark Case.**

7. Nor will such general statements prevail when the record shows that defendants were in the habit of buying land on a general cruisers estimate without special examination and that they purchased the particular land in controversy on the advice of counsel of high standing after examination of the abstract of title thereto.

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### STATEMENT.

This is a suit by the United States Government to annul a land patent on the ground that the homestead entryman defrauded the Government, in that he did not reside upon, improve and cultivate his land, as required by the homestead laws. The charge of fraud is strictly confined to the failure to reside upon, improve and cultivate. (R. p. 6.) The homestead entryman, **Walter O. Allen**, is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R. pp. 5 and 9) and it is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt**. The bill then proceeds to charge that the Wright-Blodgett Company Limited, had knowledge of the fraud in the entryman through its agents Boyd and Wasey. As this allegation will be the subject of discussion we reproduce it from record (page 9) as follows:

“Your orator further charges and avers that at the time of said sale or pretended sale by the said

defendant, Walter O. Allen, to the said Wright-Blodgett Company, as aforesaid, and prior thereto, and up to and including the dates of making said false and fraudulent proof of the residence upon and the cultivation of said lands by the said defendant and his said witnesses, and of the issuance of said final receipt and said certificate of purchase, and since then, and up to the time of the issuance of said patent, **one James M. Boyd, and one Nat Wasey were**, and each of them was, an agent of the said Wright-Blodgett Company, and entrusted by it in the investigation, solicitation and purchase of lands for its use and benefit; **and that the said Wright-Blodgett Company, by and through its said agents, and each of them, was well advised of, and knew, each and every detail of the acts and things done and committed, as hereinbefore set forth, and described, by the said defendant, Walter O. Allen, and his said witnesses, for the unlawful and inequitable purpose of obtaining by such false and fraudulent methods the issuance of said patent; and your orator avers and charges that said Wright-Blodgett Company, so well knowing and being advised of said false and fraudulent acts and doings on the part of the said defendant, Walter O. Allen, and his said witnesses, did, through its officers, whose names are to your orator unknown, and therefore not hereby given and set forth, did, assist, advise and encourage the commission of each and every of said acts and things, with the fraudulent purpose of obtaining title to said lands hereinbefore described."**

(Black-letters by present writer.)

The Wright-Blodgett Company, Limited, in its answer sets up that it purchased the land in good faith for value



after the issuance to the entryman of his final receipt; that if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited**, bought and recorded its purchase, they issued the patent. It points out that the fact that the United States officials had accepted the commutation and other proofs of Allen and had issued a final receipt to him, was sufficient to justify it in concluding that the homestead law was complied with. This Court has in terms held that "it was not bound to look for grounds for doubt." **Clark case; Detroit Lumber Case, 200 U. S.** It stands flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman. The case was confined strictly to the issues made by the pleadings. This appears from record, page 59, where the following agreement of counsel is produced:

"It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open Court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken."

And from record, page 19, where the following objections of the Wright-Blodgett Company, Limited, appear:

"Now comes the Wright-Blodgett Company, Limited, co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

"**Wherefore**, it now objects to the following testimony and evidence, and moves to strike out same:

"1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

"2. The bills having charged that the Wright-Blodgett Company Limited, had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy, and asks that same be stricken out.

"3. There is no allegation in the bills charging invalidity in the entries on the ground that the entryman sold or agreed to sell, prior to making final proofs, hence any attempt to show such a situation would be irrelevant and a variance, and is objected to as such, and motion made to strike same out.

"4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock, is objected to as irrelevant, and motion made to strike same out.

"It appearing that there are filed herein certain letters passing between the department of the

government and officials thereof and certain reports of special agents, and same are objected to by the Wright-Blodgett Company, Limited, on the ground:

- “1. As not the best evidence and hearsay.
- “2. As unsworn statments of persons not sworn as witnesses.
- “3. As **res inter alios acta**, irrelevant and immaterial.”

The recent decisions of this tribunal leave no room or doubt as to the correctness of the appellants' contentions that the title of a purchaser in good faith, buying in the faith of a final receipt, is not affected by fraud in the entryman. These decisions are as follows:

**200 U. S., 601, United States v. Clark:**

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

“This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a **bona fide** purchaser, excepted as such from the invalidation of the patents by the act, and denied the material allegations of the bill. Voluminous evidence was

taken, and at the hearing the bill was dismissed by the Circuit Court. **125 Fed. Rep., 774.** That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry (**125 Fed. Rep., 776, 777**), and considering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark. One Judge dissented on the ground that Clark knew enough to be put upon inquiry. **138 Fed. Rep., 294.** The United States then appealed to this Court.

“The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER’S RECEIPT,** but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. *Landes v. Brant*, 10 How., 348; *Bush v. Cooper*, 18 How. 82; *Myers v. Croft*, 13 Wall., 291; *United States v. Detroit Timber and Lumber Co.*, 200 U. S., 322. See, further, *Ayer v. Philadelphia and Boston Face Brick Co.*, 159 Massachusetts, 84. But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch **AS HE DID NOT PURCHASE ON THE FAITH**

**OF THE PATENTS**, he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

**"WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals, **THAT THE ORIGINAL FRAUDS ARE MADE OUT**, although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co.**, 200 U. S., 321. The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS.** The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT.** It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

\* \* \* \* \*

**"\* \* \*** There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He dealt as a purchaser with Cobban, and paid him the market price, and a substantial profit even on

the Government's calculation. **SO FAR AS ANY INFERENCE WAS TO BE DRAWN FROM THE NEARNESS OF THE RESPECTIVE DATES OF THE RECEIVER'S RECEIPTS, THE DEEDS OF THE ENTRYMEN TO COBBAN AND THE DEEDS OF COBBAN TO CLARK, IT WAS AS OPEN TO THE OFFICERS OF THE GOVERNMENT AS TO CLARK, IF INDEED HE KNEW ANYTHING ABOUT THOSE DATES, YET THEY SEEM TO HAVE SUSPECTED NOTHING, AND HE WAS ADVISED BY REPUTABLE COUNSEL THAT THE TITLES WERE GOOD, AND BOUGHT ONLY ON HIS ADVICE. \* \* \* IT IS ARGUED, FURTHER, THAT CLARK'S INSPECTOR MUST HAVE GONE UPON THE LAND ABOUT THE TIME OF THE ENTRIES IN ORDER TO DO THE NECESSARY WORK OF ESTIMATING THE TIMBER. IF, FOR THE PURPOSE OF ARGUMENT, WE ASSUME THAT KNOWLEDGE OF A TIMBER INSPECTOR OF FACTS AFFECTING THE TITLE, WITH WHICH HE HAD NOTHING TO DO, WAS CHARGEABLE TO CLARK, STILL THE KNOWLEDGE IS A MERE GUESS. THERE WAS NOTHING PRESENT OR REQUIRED TO BE PRESENT ON THE FACE OF THE EARTH TO INDICATE WHEN THE ENTRY TOOK PLACE. WE CANNOT INFER FRAUD MERELY FROM MORE OR LESS FAMILIAR RELATIONS BETWEEN SOME OF CLARK'S AGENTS AND COBBAN. When suspicion is suggested it easily is entertained. But, bearing in mind, as was said in *United States v. Detroit Timber and Lumber Co.*, *supra*, that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF****

**DOUBT**, and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

**100 U. S., 321, U. S. v. Detroit Lumber Co.:**

The facts in this case are stated in the opinion as follows:

"The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.

"The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a **bona fide** purchaser from the former company."

The Court held, page 329, that the entrymen were in bad faith. The sole questions then left was the good faith

vel non of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

“In their brief counsel for the Government say:

“ ‘We claim that the law as laid down in **Hawley v. Dillon**, that one who takes title before the issuance of patent, cannot claim to be a bona fide purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.’

“We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. **Jones v. Simpson**, 116 U. S., 609, 615. He is not bound to make a searching examination of all the account books of the vendor, nor to hunt for something to cast a suspicion upon the integrity of the title. \* \* \*



"In the light of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

"Now, what is the law controlling under these circumstances? Much reliance is placed by the Government on **Hawley v. Diller**, 178 U. S., 476, which, affirming prior cases, holds that an entryman under the Timber Act acquires only an equity, and that a purchaser from him cannot be regarded as a **bona fide** purchaser within the meaning of the act. \* \* \*

\* \* \* It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman and will in due course issue to him a patent. He is the equitable owner of the land. It becomes subject to state taxation, and under the control of State laws in respect to conveyances, inheritances, etc. **Carroll v. Safford**, 3 How., 441; **Witherspoon v. Duncan**, 4 Wall. 210; **Simmons v. Wagner**, *supra*; **Winona and St. Peter Land Co. v. Minnesota**, 159 U. S., 526; **Cornelius v Kessel**, 128 U. S., 456; **Hastings & Dakota R. R. Co. v. Whitney**, 132 U. S., 357; **Benson Mining Co. v. Alta Mining Co.**, 145 U. S. 428.

"Indeed, in some of the opinions of this Court, emphasizing the value of a receiver's receipt, there are expressions which seems to underestimate the significance of a patent. **Wisconsin Central R. R. Co. v. Price County**, 133 U. S., 496,

510; *Deseret Salt Co. v. Tarpey*, 142 U. S., 241, 251. \* \* \*

197 U. S., 200, *United States v. Stinson*:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and it is a good defense that the title has passed to a bona fide purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. \* \* \*

"*United States v. Burlington & Missouri River R. R. Co.*, 98 U. S., 334, 342; *Colorado Coal Co. v. United States*, *supra*, p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

"But it is not such a fraud as prevents the passing of the legal title by the patents. It fol-

lows that to a bill in equity to cancel the patents upon these grounds alone the defense of a bona fide purchaser for value without notice is perfect.' *United States v. Marshall Mining Co.*, 129 U. S., 579, 589; *United States v. California, Etc., Land Co.*, 148 U. S., 3, 41; *United States v. Winoona, Etc., Railroad Co.*, 165 U. S., 463, 479."

### RESUME.

To resumé, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the *Clark case* in these words:

"The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud." "The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect**. It is recognized in the act of March 3, 1891, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.**"

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as com-

plainant in the suit, to prove that the Wright-Blodgett Company, Limited, had actual notice of the alleged fraud in the entryman, and since the bill of complaint specifically charged such actual notice through, and only through J. M. Boyd and Nat Wasey, it was incumbent upon the Government, as complainant, to prove that **KNOWLEDGE THROUGH THE MEN NAMED AND NOT OTHERWISE.** An attempt to show such knowledge through any other person or persons would have been clearly inadmissible under the pleadings, and evidence in support of such an attempt should have been excluded from the record, if properly objected to. That timely and proper objection was made to such evidence has been shown, *supra*, this brief, page 6. The law on the subject is as follows:

**121 U. S., 325, Maxwell Land Grant Case:**

This was a suit by the United States to annul a grant of land. This Court said:

“Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside should be successful **only when the allegations on which this attempt is made are clearly stated and fully proved.** In this case the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill, and the decree of the Circuit Court dismissing it is affirmed.”

**172 Fed., 950, United States v. Barber Lumber Company:**

This was a suit by the United States to annul a patent for alleged fraud. The syllabus reads:

“In a suit of this character the bill must show specifically and in detail what the fraud consists of and how it was effected, and although the complainant may make out a case which under the circumstances would entitle it to the aid of the Court, yet if it is not the case made out in the bill it cannot recover.”

**102 U. S., 372, United States v. Atherton:**

“A bill in chancery to set aside a judgment or decree of a Court of competent jurisdiction, on the ground of fraud, must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the Court or the party injured was misled or imposed upon.

“A bill to set aside or annul a patent of the United States for public lands or to correct it, on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred.”

**Harrison v. Nixon, 9 Peters, 503:**

“Every bill must contain in itself sufficient matters of fact, *per se*, to maintain the case of the plaintiff, so that the same may be put in issue by the answer and established by the proofs. The proofs must be according to the allegations of the parties. and if the proofs go to matters not with-

in the allegations, the Court cannot judicially act upon them, as the ground for its decision, if the pleadings do not put them in contestation, the 'allegata' and the 'probata' must reciprocally meet and conform to each other."

**Boone v. Childs, 10 Peters, 209:**

"A party is not allowed to state one case in a bill or answer and make out a different one by proof; the 'allegata' and 'probata' must agree; the latter must support the former."

**Byers v. Swiget, 19 Howard, 309:**

"It is undoubtedly the rule in equity, as well as at law, that the proofs must correspond with the allegations, and that evidence irrelevant and inapplicable to the latter will be regarded as immaterial."

**Rubber Co. v. Goodyear, 9 Wallace, 793:**

"The proposition that the patent is fatally defective because it is impossible to make merchantable goods according to the instructions contained in the specifications, cannot be entertained. The answer contains no averment upon the subject. No such issue was tendered to the complainants and they have had no notice that such a defense was intended to be relied upon.

"In equity, the proof and allegations must correspond. The examination of the case by the Court is confined to the issues made by the pleadings. Proofs without the requisite allegations are as unavailing as such allegations would be without the proofs requisite to support them."

**United States v. Tichenor, 12 Fed., 425:**

"In the bill it is alleged that the patent was fraudulently obtained by means of false proofs, but of what the fraud consists, or wherein the proof was false, is not stated. Such an allegation is not sufficient on demurrer. The bill should have gone further and set forth the substance, at least, of the acts constituting the fraud, or stated wherein the proof was false."

**Phelps v. Elliott, 35 Fed., 461:**

"The rule is fundamental in equity pleading that every fact essential to the complainant's title to maintain the bill and obtain the relief, must be stated in the bill. Otherwise the defect will be fatal. In the language of the Court in **Harrison v. Nixon, 9 Pet., 483, at page 503**: 'Every bill must contain in itself a sufficient matter of fact *per se* to maintain the case of the plaintiff. The proofs must be according to the allegations of the parties, and if the proof go to matter not within the allegations, the Court cannot judicially act upon them as a ground for decision if the pleadings do not put them in contestation.' The 'allegata' and 'probata' must specifically meet and conform to each other, and it can no more succeed upon a case proved, but not alleged, than upon a case alleged but not proved \* \* \* a decree must be sustained by the allegations of the parties, as well as the proofs in the cause, and cannot be founded on a fact not put in issue in the pleadings."

**Platt v. Battier, 34 U. S., (9 Peters) 405:**

"Where a bill is filed to compel the conveyance of legal title to certain land, and the statute of

limitations is relied upon by defendant and no disability is alleged by complainant in his bill to take the case out of the statute, the question of disability, not being put in issue by the pleadings, the Court can consider evidence tending to show such disability."

**Blandy v. Griffith, Fed. Cases, No. 10,529:**

"The rule is well settled in equity that every material fact on either side must be set up in the pleadings, and, that the Court can no more consider what is proved, but not alleged, than what is alleged, but not proved."

**Grosvenor v. Dassiell, 25 U. S. App., 227, 27 L. R. A., 67:**

"A Court of equity will not grant a decree on another ground, where the bill charges actual fraud as the ground for relief, and the fraud is not proven.

**Eyre v. Patter, 56 U. S., 42 (15 Howard):**

"A bill in equity charging actual fraud is not maintained by evidence of constructive fraud."

**98 U. S., 69, United States v. Throckmorton:**

This was a bill in chancery brought by the United States Government to set aside a patent for lands. Dealing with the question of notice of an alleged fraud, the Court said:

"The substance of it is that Howard, one of the present defendants, then the law agent of the Government before the board, had from the papers in



some other suit, derived notice of the fraudulent character of the Micheltorena grant, and that he failed and neglected to inform the commissioners of the fact, or otherwise to defend the interest of the United States in the matter. If there had been a further allegation that Howard was then interested in the Richardson claim, or that Richardson had bribed him, or that from any corrupt motive he had betrayed the interest of the Government, the case would have come within the rule which authorizes relief; but nothing of the kind is alleged and the statement is a mere charge of carelessness or negligence on the part of the attorney for the Government, which would not have supported a motion for a new trial in a case of twenty years after it had been rendered.

**“Nor is there any such clear statement of the notice which Howard had as is necessary to establish his negligence.”**

Although the foregoing authorities seem to leave no doubt of its obligation so to do, complainant made no serious attempt to prove up its case as alleged in its bill, and made no serious attempt to connect either J. M. Boyd or Nat Wasey with the Wright-Blodgett Company's purchase from the entryman, Walter O. Allen, of the land here in dispute. Complainant, however, did attempt, over the objection of the defendant, to show that the Wright-Blodgett Company, Limited, purchased the land, and, therefore, presumably had knowledge of the alleged fraud in the entryman, through one Thomas B. Dickens, a person not referred to in the bill at all. In support of this contention, the entryman, Walter O. Allen, was

placed upon the stand and swore that the purchase of the land by the Wright-Blodgett Company, Limited, from him was negotiated through a Mr. Dickens. (Allen at first designated him as Mr. King, and later, after leaving the stand and conversing with Government witnesses, again took the stand, and, on page 124, corrected his testimony by stating that the man's name was Dickens.)

On page 120 of the record Allen swore as follows:

Q. Was Mr. King or any other agent of the Wright-Blodgett Company ever out to that homestead entry to make an investigation of it?

A. Not that I know of.

At record page 160 the following appears in regard to Dickens:

"It is admitted that both the Government and the defendants in their cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him."

Not once in the whole of his testimony does the entryman, Allen, ever mention the name of Nat Wasey, and only once does he mention the name of J. M. Boyd. On this solitary occasion he states that J. M. Boyd, who is shown at record (p. 97) to have been an United States Commissioner at that time, was the commissioner before whom he made his commutation proof. We think, therefore, that we may safely say that the complainant's testimony, while failing to show that Dickens had knowledge of the alleged failure of the entryman to comply with the Homestead law, does affirmatively show that

neither J. M. Boyd nor Nat Wasey was in any wise connected with the purchase of this land by the Wright-Blodgett Company. From which it naturally follows that the Wright-Blodgett Company, Limited, could not have had knowledge through them of the frauds charged by the bill.

In support of the above statements, it might not be amiss to give a brief history of the advent of the Wright-Blodgett Company, Limited, into Louisiana, and of its method of doing business.

### **NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.**

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec., pp. 73-74.) It shows that when that company first went into Louisiana it secured from one of the best available firm of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by

J. M. Foster, a witness for the complainant, who swears as follows (Rec., p. 72):

Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?

A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.

Q. Who are J. D. Lacey & Company?

A. Real estate man, with an office in New Orleans.

Q. Do they or do they not make a business of making these timber cruises or estimates?

A. It is their principal business, or was, at that time.

Q. How do they stand in the business and how are their estimates considered by timber people?

A. Of the best.

Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without and further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 73.)

Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?

A. That is the usual case, the usual method of doing business.

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts

of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no attention to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 82):

Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.

Q. (9) Do you make any statement as to the condition of the house?

A. None whatever; I do not.

Q. (10) Do you pay any particular attention to the condition of the house?

A. Not to the house, simply as to how its land is cleared.

Q. (11) You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

Q. That is the custom observed among all timber estimators?

A. Yes.

(Page 83):

Q. (8) In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the laws so as to entitle them to a final receipt?

A. I never did.

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homesteads would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the **final receipt**, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that the Wright-Blodgett Company, Limited, **followed that custom**, for Foster tells us that he never

made such an investigation, and at record, page 81, it appears that he was for some years an employee of the Wright-Blodgett Company, Limited, although at the time he gave this testimony he was employed by other persons.

The testimony further is that the Wright-Blodgett Company, Limited, defendants herein, made it a custom to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana, (Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

**Wingate testified (Tr., p. 157):**

Q. You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; they were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.

Q. They did not purchase any lands until Pujo & Moss approved the title?

A. That was my understanding.

**Foster** testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 81):

Q. At the time you first went into the office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?

A. Yes, sir; all titles.

Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?

A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

**C. D. Moss** testified (Rec., p. 86):

Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?

A. Yes, sir; my recollection is that the employment began about 1899.

Q. What was the nature of that employment?

A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.

Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?



A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office, after the deeds were acquired from the different owners, and these deeds were carried on the abstract, so that our opinions would show our opinion of the titles in the Wright-Blodgett Company; in some cases, I recall, there were two written opinions.

(Rec., p. 89):

Q. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett Company?

A. I think all but the first transaction. My recollection is that when the company first organized it purchased a very large tract of land from parties in Chicago, the Fairbanks people, and according to the best of my recollection that purchase was made before Pujo & Moss ever saw the abstract of title.

Q. In cases where the Wright-Blodgett Company would purchase direct from entrymen or Government land, would you be called upon to pass upon such title where there was no transfer nor intervening transaction?

A. That is my recollection, that the abstract would be brought in either before or after issuance of the patent; the abstract would always be brought in showing the issuance of the patent, or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, written opinions would be given, and then

after the deed was acquired in the name of the Wright-Blodgett Company, either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards, Mr. Kelley explained to us that he wanted opinions from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that in the event of sale subsequently these written opinions could be used.

(Page 89):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 91):

Q. (30) Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?

A. No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.

(Page 93):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to the Assistant District Attorney, you explained the attitude of the Calcasieu bar prior to the coming of the Government inspectors into Calcasieu Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 92 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified, on page 93, that his firm had actually passed upon the title here in dispute, and the

written opinion of the firm approving the title is in evidence. (Rec., p. 58.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they bought it on the faith of the general estimate made by J. D. Lacey & Company, without making any special investigation of the land. It appears, further, that the attorneys for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases**, where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the Wright-Blodgett Company's situation? They knew from the opinion of Pujo & Moss that the title was good. They knew from the estimate made by J. D. Lacey & Company exactly what timber and what property they were buying. There was no occasion for further investigation, a fact which the foregoing quotation from Wingate's testimony emphasizes, he having stated that his instructions were to send abstracts to Pujo & Moss, and if they approved the titles, the draft would be paid without further todo. It further appears that even had a special investigation been made, that investigation would have been made with a view

solely to substantiating the statements made in the estimate of J. D. Lacey & Company as to the amount of timber standing on the land. And it appears further that the only information secured from such an additional investigation by the Wright-Blodgett Company, Limited, would have been a timber estimator's report, which report would have contained no information on the subject of compliance **vel non** by the homesteader with the Homestead law. On this subject **Foster**, page 83, Question 8, testified as follows:

Q. In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the law so as to entitle him to a final receipt?

A. I never did.

The foregoing is particularly important in this case, for the reason that the evidence adduced by the Government itself conclusively shows that all of the outward signs of compliance with the Homestead laws were taken by Mr. Allen, the entryman. Thus, the Government's own witnesses show that Walter O. Allen went upon the land and built, or had built upon same, **a good house**; around this house he built **a good fence, a stable, a hog-pen, and other out-houses**. He dug **a well**, he cleared something over **an acre** of ground, and in his clearing set out fruit trees and planted a crop of peas and corn. The fruit trees were kept free of grass and weeds and the whole establishment looked after generally. The testimony on this subject is as follows:

**Allen** (page 116):

Q. Explain all the steps taken by you as to improvements?

A. This house was built by Hicks and myself, he giving the contract to Mr. Bass; he built both houses.

Q. Did you cultivate the land in any way, to any extent?

A. Mr. Bass, or Lawrence, did no cultivating.

Q. To what extent was cultivating done?

A. About two acres. \* \* \*

Q. Was any planting done on your side of the line?

A. Yes, sir.

Q. What?

A. Peas, the first crop planted.

Q. Did that crop mature? Was the crop ever gathered?

A. No, sir; nothing but peavines made.

Q. Any trees planted?

A. Fruit trees, some peaches and plum trees.

Q. Were those trees cultivated?

A. I kept the grass away from them and fertilized them.

(Page 113):

Q. You say you and Mr. Hicks had a double house, what is commonly called a double pen?

A. Yes, sir.

Q. Any doors and windows?

A. Doors, but not windows.

Q. Was the enclosure actually fenced in?

A. Yes, sir.

Q. Any outbuildings?

A. A stable.

Q. Did you have any orchard trees?

A. Yes, sir.

(Page 114):

Q. What work did you do there?

A. I planted trees, built fences and outhouses.

With all of these improvements made and kept up on the land, it is quite evident that the ordinary timber cruiser passing over the land and observing a house, a well, a growing crop, growing fruit trees, with the grass kept away from them, fences, outhouses, etc., would have something to put him on notice that the homesteader had not fully complied with the law; and this is particularly true when we bear in mind the fact that timber cruisers pay no particular attention to improvements. To this situation the following language used by this Court in the **Clark case** is peculiarly appropriate (200 U. S., 601, **S. v. Clark**):

“It is argued, further, that Clark’s inspector must have gone upon the land about the time of the entries in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of a timber inspector of facts affecting the titles with which he had nothing to do was chargeable to Clark, still the knowledge is a mere guess. There is nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark’s agents and Cobban.”

**ALLEN'S ENTRY AND FINAL PROOF WAS IN  
STRICT ACCORDANCE WITH THE FORMS  
PRESCRIBED BY LAW AND DECEIVED  
THE TRAINED GOVERNMENT EX-  
PERTS.**

Not only was all of the foregoing true, but the evidence shows that Allen made his final proof in due form, swearing and having his witnesses swear that he had established his actual residence on the land, had cultivated two acres and had put improvements thereon. The proof was so satisfactory on its face that the Government, after issuing the final receipt to Allen, on July 10, 1901, proceeded (after presumably making further investigation, in order to ascertain that the entry was correct in all respects), to issue a patent some nine months later, to-wit: on April 1st, 1902. This patent is the patent now assailed. This patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded. (Rec., p. 25.) That is to say, the Government issued the patent after being informed by the record of the sale to the Wright-Blodgett Company, Limited.

The proof was apparently so full and correct that as the bill says (Rec., p. 7):

“The said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements so falsely and fraudulently



given and made by the said defendant and his said witness, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement, and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and the issuance of the United States patent therefor, by the said officers of the United States, as hereinabove set forth, and the delivering of the said patent to the defendants."

Our natural inquiry is: If the proof was so full as to deceive the skilled experts of the United States Land Office, whose **DUTY** it is to investigate and to hunt for **grounds of doubt**, why should the Court infer that it did not equally deceive the Wright-Blodgett Company, Limited, upon whom no such duty was imposed? This record gives no satisfactory answer to this inquiry. On the contrary, it appears that there was nothing in the way in which the Wright-Blodgett Company, Limited, went about making its purchase, and nothing in the way in which Walter O. Allen, the entryman, went about making and commuting his entry, which could or should, under normal circumstances, have placed the Wright-Blodgett Company Limited, upon notice of any alleged fraud in the entryman, Walter O.

Allen, and there is no proof in this record that this purchase was made other than in the normal manner.

But we are told by the bill that the Wright-Blodgett Co., Ltd., had this knowledge through J. M. Boyd and Nat Wasey. Let us get the dates in mind and then examine into the correctness of this assertion. The Wright-Blodgett Company, Limited, acquired this land (Rec., p. 25) on July 10, 1901. The record affirmatively shows that at that time J. M. Boyd was not, and had never been in the employ of the defendant. We base this statement upon the testimony of the Government's witness, Foster. He swears, at page 65, that he was employed by the Wright-Blodgett Company, Limited, in the fall of 1901. On pages 70 and 79 he swore that for several years prior to that time he had an office in Lake Charles, Louisiana, in the immediate neighborhood of the office of the Wright-Blodgett Company, Limited, and that he knew the persons in charge of the latter's office. On page 74 he swore:

Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?

A. He was never in the employ of the company, while I was with them, and I don't believe before I was with them.

J. M. Boyd may, therefore, be eliminated from the discussion. He was not an agent of the Wright-Blodgett Company, Limited, but was an agent of the United States an United States Commissioner. No knowledge of any

alleged frauds in the entryman can be held to have been acquired by the Wright-Blodgett Company, Limited, through him.

As to Nat Wasey, the record shows that at the time of the trial of this case he was dead. ( Rec., p. 62.) Even should it be held that Wasey was the agent of the Wright-Blodgett Company, Limited,, there is not a single line of testimony anywhere in this record going to show that **Wasey was ever on the land here in controversy**, or had any knowledge of same, or to show that he knew that the Wright-Blodgett Company, Limited, had bought the land, or in fact, to connect him with this transaction in any way. On the other hand the record affirmatively shows that the purchase of this land by the Wright-Blodgett Company, Limited, was effected through another person, and that Wasey **had no connection with the matter**. We make this statement because the evidence shows that the entryman, Walter O. Allen, was a brother-in-law of J. J. Hicks, and that the arrangements looking to the sale of the land by Allen to the Wright-Blodgett Company, Limited, were perfected through J. J. Hicks.

Mr. Hicks, who was placed upon the stand by the Government, testified in regard to the matter as follows (Rec., p. 102):

Q. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see whether it was probably settled or lived on or the Homestead laws were complied with?

A. I do not.

Q. Do you know Nat Wasey?

A. Yes, sir; I did know him.

Q. How long had you known Wasey at the time you commuted this land?

A. I think I met Mr. Wasey before I was elected clerk of Court, about the time I began to work for Mr. Winfree, in 1899.

Q. Did you ever have any talks with Mr. Wasey regarding this land?

A. No, sir.

. . . . .

Q. Was Wasey ever at your house?

A. No, sir.

Q. Do you know from his acts or words that he was aware of your living there?

A. I do not.

Moreover, there appears in the record the affirmative testimony of the entryman, Allen, another government witness, who swore, on page 120, as follows:

Q. Was Mr. King or any other agent of the Wright-Blodgett Company Limited, ever out to that homestead to make an investigation of it?

A. Not that I know of.

In view of the foregoing affirmative testimony and of the fact that there is, as noted above, absolutely no showing that Wasey was at any time upon the land, or that he was in any wise connected with the purchase of the land by the Wright-Blodgett Company, we submit that the complainant has failed entirely to make out the allegations of the bill and that the bill should be dismissed.

This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been emphatic and its decisions have been uniform. Some of the language used is as follows:

**121 U. S. 381, Maxwell Land Grant Case:**

“We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the

officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

**123 U. S., 307, Colorado Coal & Iron Co. v. United States:**

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained, from the Land Office, or the officers who had witnessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the

Government to produce so much of this further evidence as could be obtained, and that, in its absence, the United States had not made all the proof of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

**133 U. S., 193, U. S. v. Hancock:**

The syllabus reads:

"Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for \$1500.00, though it may be the subject of criticism, is not the clear, convincing and unambiguous proof of fraud which is required to set aside a patent of public land."

**197 U. S., 200, United States v. Stinson:**

The syllabus reads:

"The Government, like an individual, may maintain any appropriate action to set aside its grants

and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof. when the allegations are clearly stated and fully sustained by proof.

“In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a **bona fide** purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties.”

A reading of this record will, we submit, convince this Court that there is no clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright-Blodgett Company, Limited.

### **THE EVIDENCE RELIED ON.**

The evidence relied on by the complainant in this case consists of a number of general statements in regard to Nat Wasey's connection with the Wright-Blodgett Com-



pany, Limited, and one or two still more general statements in regard to Wasey's field of operations being in the vicinity of Leesville. There is, as pointed out above, nothing to show that he was ever on this land, and nothing to show, except in the most general way, the location of this land with respect to Leesville. The main evidence upon which complainant appears to rely is the fact that the entryman, Walter O. Allen, received his final receipt on July 8th, 1901, and sold the land on July 10, 1901. This phase of the situation has already been dealt with by this Court in the **Clark case**, where the Court said:

“So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipts, the deeds of the entryman to Cobben and the deeds of Cobben to Clark, it was as open to the officers of the Government as to Clark, if, indeed, he knew anything about those dates; yet they seem to have suspected nothing and he was advised by reputable counsel that the titles were good and bought only on his advice.”

Add to this fact that the United States Government, after the purchase was made by the Wright-Blodgett Company, Limited, in July, 1901, and after that company had recorded its deed to the land, proceeded presumably, to make a further investigation as to the validity of the entryman's claim, and thereafter, namely, in the year 1902, proceeded to issue a patent to the land. This would seem conclusively to prove that there was no reasonable ground suggested to the Wright-Blodgett Company, Limited, upon which to predicate a suspicion of any fraud in the entry.

For these reasons we submit that the judgment of the Court of Appeals is erroneous and should be reversed and a decree entered dismissing the bill.

J. BLANC MONROE,  
MONTE M. LEMANN,

A. R. MITCHEL,

Solicitors for Defendants.

Office Supreme Court, U. S.

FILED

JAN 26 1915

JAMES D. MAHER  
CLERK

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1914.**

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**No. 152.**

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**WRIGHT-BLODGETT CO., LTD. (ALLEN CASE),  
APPELLANT,**

**vs.**

**THE UNITED STATES, APPELLEE.**

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**REPLY BRIEF OF APPELLANT.**

---

**J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHELL,**

*Solicitors.*



# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

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**No. 152.**

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WRIGHT-BLODGETT CO., LTD. (ALLEN CASE),  
APPELLANT,

*vs.*

THE UNITED STATES, APPELLEE.

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**REPLY BRIEF OF APPELLANT.**

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As nearly as we can gather from the position assumed by the appellee the gravamen of the charge made in this case is that it is in bad company. The contention is that in the Hicks case a showing was made of notice of fraud in the Wright-Blodgett Co., Ltd., and because the Hicks and Allen purchases were handled jointly, therefore, notice in the one case carries notice in the other.

A somewhat similar argument was made in the case of U. S. *vs.* Budd, 144 U. S., 154, and this court devoted the whole of page 164 to a demonstration of its fallacy. It pointed out that if separate bills to set aside separate purchases by the same person were to be filed, and if the cases resulting were to be tried separately *as was done in these*

*cases*, the defendant might confess judgment in one case without thereby prejudicing its rights in any of the others. Fraud is neither infectious nor contagious. So that even were fraud and knowledge of fraud proven in the Hicks case, which we, of course, deny, that showing could not, we submit, have any effect on the Allen case.

Shorn of the theory of notice by infection, complainant's contention in this case is that Allen contracted to sell his land to the Wright-Blodgett Co., Ltd., before he received his final receipt.

We respectfully submit the following answers to this contention :

*First.* No such claim was set up in the bill and the attempt to set it up at the trial was cut off by timely objection.

*Second.* The only witness placed upon the stand to prove such an agreement was J. J. Hicks, who categorically swore that no such agreement existed.

*Third.* Under the principles announced in the Williamson case, 207 U. S., a "commuter" under U. S. R. S., 2301, would have the right to make such an agreement.

In support of answer "*First*," we respectfully refer the court to the bill (Transcript, pp. 2 to 11), and especially to paragraph sixth thereof, which plainly shows that the only charge of fraud leveled at this patent consisted in the failure of the entryman to reside upon and improve the land. The defendant's objection to any enlargement of the scope of the bill is to be found at Record, p. 20, and reads :

"There is no allegation in the bill charging invalidity in the entries on the ground that the entryman sold or agreed to sell prior to making final proofs, hence any attempt to show such a situation, would be irrelevant and a variance and is objected to as such and a motion made to strike same out."

This objection is repeated on page 21 as No. 5 and on pages 99 and 100. See agreement page 59 as to making of objections.

*"Second."*

In support of answer "second" we point to the testimony of J. J. Hicks who swears as follows, at page 130:

"53. When Mr. Dickens agreed to advance the money for his commutation, was any understanding entered into as to what disposition would be made of the lands after proof was made?

"A. No, sir.

"54. No understanding that they would be sold or not?

"A. He had asked me the question before as to whether or not we intended selling our land and I told him we were.

"55. Was there any understanding or agreement between you and Dickens or the Wright-Blodgett Co. that after this commutation and issuance of final receipt that the land would be sold to the Wright-Blodgett Co.?

"A. No, sir; there was not.

See on this subject 144 U. S., 144, U. S. *vs.* Budd.

*Third.*

In support of our answer, "third," we respectfully submit that since the Timber and Stone Act requires the entryman to swear that he intends to appropriate the land to his own exclusive benefit and use, and that no agreement has been made, directly or indirectly, with any person or persons whomsoever by which the title to be acquired from the Government shall inure, in whole or in part, to any person except the applicant. A provision which the subsequent section dealing with final proof omits, and since this court has held in the Williamson case that it could not without ju-

cial legislation insert such a requirement into the final proof provision, and could not in the absence of such a requirement hold that the entryman was precluded from contracting to sell before making that proof; *therefore*, if the analogy is to be followed, since section 2290, U. S. R. S. contains such a provision, and section 2301, dealing with final proof, not only omits it, but provides that—

*"Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of section 2289 from paying the minimum price for the quantity of land so entered at any time after the expiration of four calendar months from the date of such entry, and obtaining a patent therefor upon making proof of settlement and of residence and cultivation for such period of fourteen months, and the provisions of this section shall not apply to lands on the ceded portion, etc., but shall not relieve any settler from any payment now required by law."*

It cannot be said without materially adding to the statute that it contains a non-alienation provision. Section 2301 U. S. R. S. provides a different method of entering land at a different price under different conditions from the regular final homestead proof section. It provides specifically just what the entryman is to swear to. It does not require him to swear to non-alienation. Does not this mean that the non-alienation provision is waived?

We are not unmindful of the decision in *Bailey v. Sanders*, 228 U. S., but it seems to us that that case may be differentiated on the ground that in it a *patent never issued*. The record showed that the land department had a regulation which required that the entryman make a showing of non-alienation and the LAND DEPARTMENT refused to issue the patent and cancelled the entry because the entryman did not comply with that regulation. Your honors were asked to reverse the Land Department. Here the Land Department *issued the patent* and the Attorney General asked that you reverse the Land Department.



Each of these answers we believe to be conclusive. If so they dispose of this case.

Returning to the original bill which has almost been lost sight of in this excursion far afield, we find it contending that the patent is invalid because the entrymen failed to reside upon, cultivate, and improve the land as required by law, and because the Wright-Blodgett Co., Ltd., had knowledge of said fraudulent conduct of the entryman through Nat Wazey and J. M. Boyd.

J. M. Boyd has been eliminated, as shown in our original brief at page 38, and as no effort has been made by appellee to refute our contentions in regard to him, we think we may consider the point conceded.

Nat Wazey appears from appellee's brief to be equally well disposed of. We have searched that brief in vain in an effort to find reference to evidence tending to show knowledge in Wazey of the *Allen land* and its condition, but have found none. May we not therefore fairly say that the record fails to show any such notice of fraud in the Wright-Blodgett Co. through Wazey.

## II.

### *Burden of Proof.*

In this court for the first time the point is made in behalf of the Government that the burden of proof of its good faith and lack of notice is on the defendant. In the courts below it was freely stated that this case is governed by the Clark case, 200 U. S., in which it was held that "actual notice must be proved" by the Government.

That decision is in accord with that principle of law which announces that "good faith" will be presumed and that he who alleges bad faith must prove it. That decision was handed down in a case strikingly similar to the case at bar. One in which a patent under the great seal of the United

States was assailed by the Attorney General. It is a very recent utterance of the court. Our learned opponents contend that it should be overruled on the authority of *Boone vs. Childes*, 10 Peters, 147. This latter case has little or nothing in common with the case at bar. It was not a suit by the Government to set aside a patent, but was a litigation between private individuals to set aside certain transactions by other private individuals. The defendant "Chiles, after the bill was filed, purchased from Green Clay the rights he held and in his answer alleges him to have been a purchaser in good faith."

That is to say, he changed his position after the filing of the bill and acquired Green Clays' rights, and claimed thereunder to be a purchaser in good faith.

The court held the burden was on Chiles to make proof of these allegations of the purchase, etc., made in his answer; that his answer would not prove itself.

We submit that this court will require stronger authority than that cited to overrule the Clark case. The other two cases cited are cases decided in inferior Federal courts, and are probably on their way to this court for revision and correction at present.

#### *Defendant and Appellant's Witnesses.*

Some stress has been laid upon the alleged failure of the defendant to produce and swear as witnesses all of its employees. This seems a strange contention.

The record shows that Michael Kelly was a representative of the Wright-Blodgett Co., Ltd., but that he was in Louisiana only *every two or three months* (R., p. 76). His testimony, therefore, could not have been conclusive as to what notice Wazey, or Boyd, had or did not have. No claim was made in the bill that any knowledge of the alleged frauds was acquired through him, and, although he was available as a witness, *no effort was made by the Government to place*

*him on the stand.* This court held, 144 U. S., 154, U. S. *vs. Budd*, that complainant was entitled to cross-examine a person so situated as a hostile witness, and held that no presumption could arise from his failure to testify. It is true that in that case the defendant's answer was under oath, but in this case the complainant waived the oath. It would, therefore, seem a little late now for the complainant to claim that defendant did not call upon Kelly to testify. If it thought his testimony pertinent, it could without risk have called him itself.

The other persons employed or claimed to have been employed by defendant in Louisiana were:

1. Nat. Wazey, who was dead at the time the suits were brought.

2. T. B. Dickens, who had defaulted and fled, and of whom the record speaks as follows, page 160:

"It is admitted that both the Government and the defendants in these cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him."

3. Ben Foster, who testified that Wright-Blodgett Co., Ltd., had a general cruise; that it was customary to buy in such a cruise, and that he never made any special investigation to ascertain compliance with the homestead laws during the time that he represented the Wright-Blodgett Co. (p. 83).

4. T. C. Wingate, who testified (p. 157) that the Wright-Blodgett Co. submitted all their titles to their attorneys for approval before final purchase.

5. C. D. Moss, of the firm of Peyo & Moss, who was sworn by defendants and testified that his firm were the attorneys

of the defendant-appellant; that they examined and approved *each of the titles here at issue*, and that they advised their clients that a final receipt was as good as a patent, and that the purchasers were not bound to look for grounds of doubt.

6. J. M. Boyd, whom the record shows not to have been an employee of the Wright-Blodgett Co., but an U. S. Commissioner.

From the foregoing it appears that all those persons, continually on the ground and available, were sworn and testified. They showed the business methods of the defendant; the fact that it purchased 150,000 acres of land in Louisiana, of which the six hundred and odd acres here in controversy constitute less than  $\frac{1}{2}$  of 1 per cent; that it was very careful to buy *only after having the titles approved by one of the most prominent and reliable law firms in the State*, and that that firm, in good faith, approved these very titles.

It showed that it was not the custom of timber estimators to make examinations to ascertain whether entrymen complied with the law; that Foster did not do so; that Wingate did not do so, and that Wazey was a timber estimator. Short of producing Dickens and Wazey, which was impossible, we submit that defendant did all that could reasonably have been required of them, and we respectfully submit that it cannot be said of them that they did not furnish evidence to support their plea of good faith. This they did voluntarily, because, as shown *supra*, the burden was on the Government to show bad faith; nor can it be said that they did not purchase in reliance on the receivers' receipt, for the testimony of Moss, pages 86, 89, 91, 93; Wingate, page 157; Foster, page 81, show conclusively that they did rely upon this receipt in making their purchase.

*The Detroit Lumber Co. Case.*

Nor is the contention that "It is no hardship to exact of a purchaser that he shall have been careful to follow up all clues to wrong-doing that came to his notice before he bought" and made meritorious. This contention is merely a resurrection of the claims of the Government which were laid to rest by this court in the Detroit Lumber case, 200 U. S., where it said:

"We do not understand the law to be as stated or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that the vendor is a wrong-doer, and that therefore he must make a searching inquiry as to the validity of his claim to the property."

*Should the Government Be Allowed to Amend Its Bills?*

On the last page of the brief filed in this court by appellee the suggestion is made that in the interest of justice, the bills may be regarded as amended, so as to admit the evidence of the alleged contract to alienate the land before receivers' receipt.

This would, we believe, scarcely be justice to the appellant. In support of the suggestion appellee cites the following case.

192 U. S., 355, U. S. *vs.* California & Oregon Land Co.:

In this case United States sued to forfeit patents for non-compliance by the landowner with his obligations regarding road building. The landowner pleaded that he was in good faith without notice. Court so held: Thereafter United States brought a new suit to set aside the same patents on ground that land was within the Klamath Indian reservation. Court held United States should have set up this in the former suit.

Court *did not hold* that in the former suit, without an allegation in the bill to that effect, United States would have been entitled to prove that the land was within the Klamath Indian reservation.

The distinction is clearly marked. It is almost universally held that one suing to recover real estate must plead and pound all of the titles upon which one relies. Thus, if A claim land X by deed from B and also by deed from C and sue D to recover that land, he is obligated to set forth his deeds from both B and C, but if he do not do so in his pleadings, preferring to rely on his title from B alone, he cannot thereafter, without amending these pleadings, offer evidence in support of his title from C. Nor will he be allowed to amend his pleading *unless he do so promptly*, for a suit upon a title from C is a materially different action from a suit upon a title from B. 12 Howard, 407, Snead v. McCaul:

The Government is far from acting promptly in seeking here for the first time to amend its bill. The amendment sought would change the issue in the case from failure to reside upon and improve to the fraudulent contract to convey. This is not a case in which the appellee is taken by surprise or in which no notice of appellants intent to object to the variance was given in the lower court. The record shows (page 99) that when the case was first called for trial in 1908 or 1909, the Government attempted to prove facts not alleged in the bill. The evidence was at once objected to as not tending to prove or disprove any fact or allegation put at issue by the pleadings.

This objection was repeated from time to time during the hearing of the case and was incorporated in a motion (pp. 17-18) made on December 22, 1909, to strike out all of the testimony on the subject as irrelevant, and another similar motion was made (R., p. 21) on February 25, 1911. The case was not finally submitted until May, 1912 (pp. 213). Thereafter it was heard in the Circuit Court of A

peals and decided in February, 1913. It thus appears that the complainant had 3 or 4 years in which to amend its pleadings in the Circuit Court but made no effort to do so. Thereafter the cause was heard by the Circuit Court of Appeals, but still no effort to amend was made. It is now that such a suggestion is put forward and that suggestion is made in a brief. We submit, that by this long delay, appellee has cut itself off from any claim to consideration by this court and will not be allowed to amend now.

22 Federal, 217 *Brewer vs. Jacobs*:

Certainly it will not be allowed to amend in this court, but the case will be remanded to the lower court to allow the defendant to meet the new issues involved.

129 U. S., 397, *Liverpool Steam Co. vs. Phoenix Insurance Co.*

142 U. S., 396, *Wiggins Ferry vs. Ohio & Mississippi Railway.*

186 U. S., 377, *Warner vs. Godfrey.*

Moreover, the plea of appellee to be allowed to amend here should be considered in the light of the repeated utterances of this court to the effect that suits to amend patents to public lands should be successful

"only when the allegations on which the attempt is made are clearly stated and fully proved,"

and particularly the ruling of the *Atherson* case, 102 U. S., 372, which, after stating the distinct particulars which a bill to set aside a judgment on grounds of fraud must contain, says (we quote the syllabus):

"A bill to set aside or amend a patent of the U. S. for public lands or to correct it on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred."

See also 172 Fed., 950 U. S. *vs. Barber Lumber Co.*

To allow the Government to allege one set of facts in its bill and to prove another and different set of facts by the simple expedient of amending in the appellate court would amount to holding that the particulars of the fraud claimed need not be alleged at all, since a stereotyped bill might be filed in all cases and amendments made in the appellate court to suit the proof adduced. For these reasons, we submit, that the bill should be dismissed.

All of which is respectfully submitted,

J. BLANC MONROE,  
MONTE M. LEMANN,  
A. R. MITCHELL,  
*Solicitors for Defendant.*

January, 1915:.



Office Supreme Court,

FILED

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JAMES D. MAHE

CLERK

**Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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No. **154**

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**WRIGHT-BLODGETT COMPANY, LIMITED,**

**(Boyd Case.)**

**versus**

**THE UNITED STATES OF AMERICA.**

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**J. BLANC MONROE,**

**MONTE M. LEMANN,**

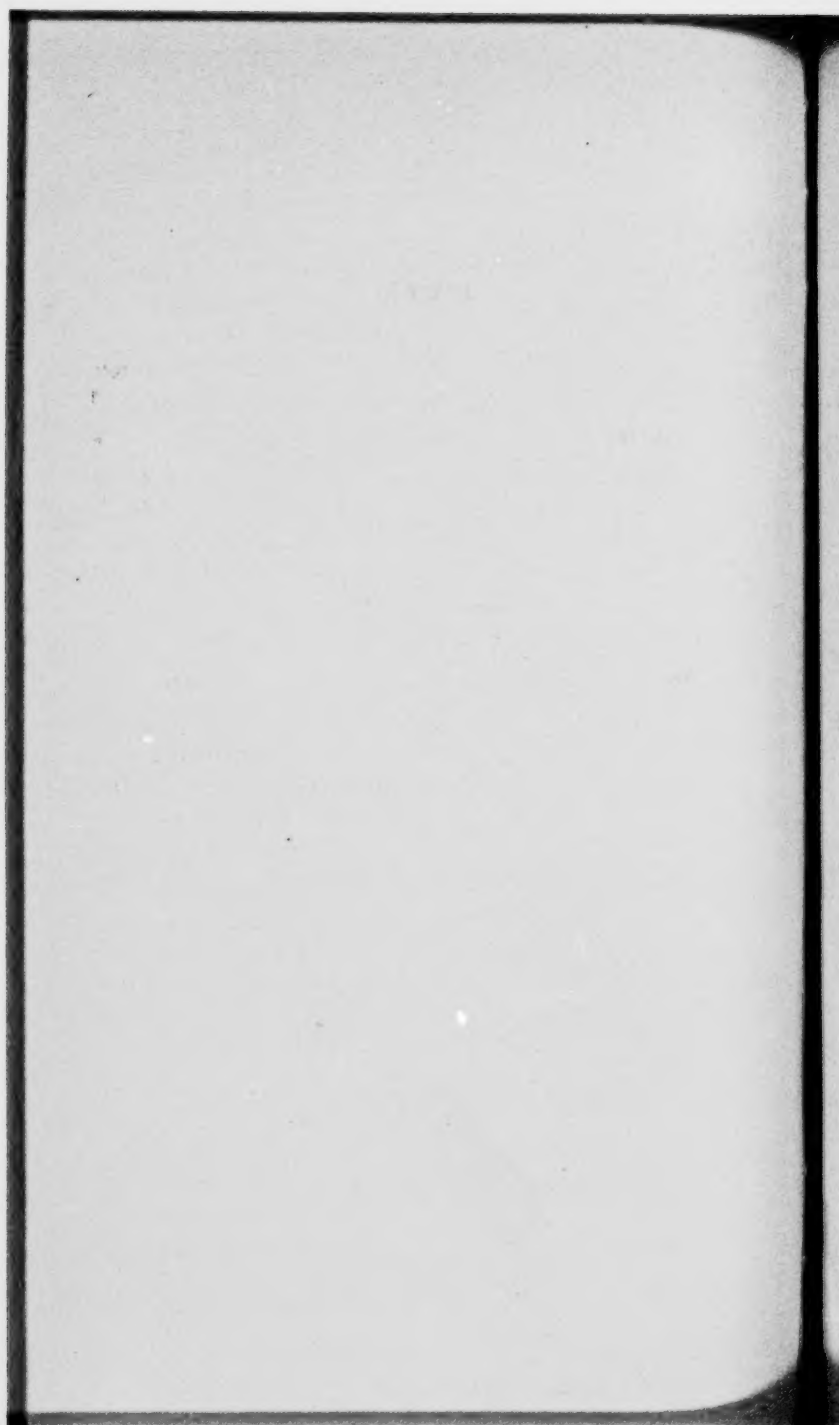
**A. R. MITCHELL,**

**Solicitors for Defendants.**

**January, 1915.**

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# **Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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**No. 155.**

---

**WRIGHT-BLODGETT COMPANY, LIMITED,**

**(Boyd Case.)**

**versus**

**THE UNITED STATES OF AMERICA.**

---

## **SYLLABUS.**

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.

**200 U. S., 601, United States v. Clark.**

**200 U. S., 321, U. S. v. Detroit Lumber Co.**

2. When the United States seeks to annul a patent on grounds of fraud in the entryman and notice in his vendee, the specific details of the fraud and of the notice must be set out in the bill, and the probata must conform to the allegata.

121 U. S., 325, **Maxwell Land Grant Case.**

172 Fed., 950, **U.S. v. Barber Lumber Co.**

174 U. S., 981, **Kennedy v. Custer.**

See other authorities, *infra*, p. 16.

3. When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which commands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.

121 U. S., 381, **Maxwell Land Grant Case.**

123 U. S., 307, **Colorado Coal Co. v. U. S., 133 U. S., 193.**

197 U. S., 200, **U. S. v. Stinson.**

4. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strong presumption arises that the entryman's vendee was likewise deceived.

5. General statements that representatives of the defendant were in the general neighborhood at the time of the purchase are not sufficient to overcome this presumption particularly so when the improvements placed upon the land were such as to create in the casual observer the belief that the law was fully complied with.

121 U. S., 381, Maxwell Land Grant Case, etc.

200 U. S., 601, Clark Case.

6. Nor will such general statements prevail when the record shows that defendants were in the habit of buying land on a general cruisers estimate without special examination and that they purchased the particular land in controversy on the advice of counsel of high standing after examination of the abstract of title thereto.
-

## STATEMENT.

This is a suit by the United States Government to annul a land patent on the ground that the homestead entryman defrauded the Government, in that he did not reside upon, improve and cultivate his land, as required by the homestead laws. The charge of fraud is strictly confined to the failure to reside upon, improve and cultivate. (R., p. 6.) The homestead entryman is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R., pp. 5 and 9) and it is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt**. The bill then proceeds to charge that the Wright-Blodgett Company, Limited, had knowledge of the fraud in the entryman through its agents Boyd and Wasey.

The Wright-Blodgett Company, Limited, in its answer sets up that it purchased the land in good faith for value after the issuance to the entryman of his **final receipt**; that if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited**, bought and recorded its purchase, they issued the patent. It points out that the fact that the United States officials had accepted the commutation



and other proofs of Boyd and had issued a final receipt to him, was sufficient to justify it in concluding that the homestead law was complied with. This Court has in terms held that "it was not bound to look for grounds for doubt." **Clark case; Detroit Lumber Case, 200 U. S.** It stands flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman. The case was confined strictly to the issues made by the pleadings. This appears from record, page 88, where the following agreement of counsel is produced:

"It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open Court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken."

And from record, page 23, where the following objections of the Wright-Blodgett Company, Limited, appear:

"Now comes the Wright-Blodgett Company, Limited, co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

"Wherefore, it now objects to the following testimony and evidence, and moves to strike out same:

"1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

"2. The bills having charged that the Wright-Blodgett Company Limited, had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy, and asks that same be stricken out.

**"3. THERE IS NO ALLEGATION IN THE BILLS CHARGING INVALIDITY IN THE ENTRIES ON THE GROUND THAT THE ENTRY-MAN SOLD OR AGREED TO SELL, PRIOR TO MAKING FINAL PROOFS, HENCE ANY ATTEMPT TO SHOW SUCH A SITUATION WOULD BE IRRELEVANT AND A VARIANCE, AND IS OBJECTED TO AS SUCH, AND A MOTION MADE TO STRIKE SAME OUT.**

"4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock, is objected to as irrelevant, and motion made to strike same out.

"It appearing that there are filed herein certain letters passing between the department of the government and officials thereof and certain reports of special agents, and same are objected to by the Wright-Blodgett Company, Limited, on the ground:

"1. As not the best evidence and hearsay.

"2. As unsworn statments of persons not sworn as witnesses.

"3. As *res inter alios acta*, irrelevant and immaterial."

See, also, objections at R., pp. 61, 62, 63, 64.

The recent decisions of this tribunal leave no room for doubt as to the correctness of the appellants' contentions that the title of a purchaser in good faith, buying on the faith of a final receipt, is not affected by fraud in the entryman. These decisions are as follows:

**200 U. S., 601, United States v. Clark:**

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

"This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a *bona fide* purchaser, excepted as such from the invalidation of the patents by the act, and denied the material allegations of the bill. Voluminous evidence was taken, and at the hearing the bill was dismissed by the Circuit Court. 125 Fed. Rep., 774. That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry (125 Fed. Rep., 776, 777), and con-

sidering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, **but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark.** One Judge dissented on the ground that Clark knew enough to be put upon inquiry. 138 Fed. Rep., 294. The United States then appealed to this Court.

"The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER'S RECEIPT,** but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. *Landes v. Brant*, 10 How., 348; *Bush v. Cooper*, 18 How. 82; *Myers v. Croft*, 13 Wall., 291; *United States v. Detroit Timber and Lumber Co.*, 200 U. S., 322. See, further, *Ayer v. Philadelphia and Boston Face Brick Co.*, 159 Massachusetts, 84. But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch **AS HE DID NOT PURCHASE ON THE FAITH OF THE PATENTS,** he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

"**WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals; **THAT THE ORIGINAL FRAUDS ARE MADE OUT**, although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co.**, 200 U. S., 321. The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS.** The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT.** It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

• • • • •

"• • • There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He dealt as a purchaser with Cobban, and paid him the market price, and a substantial profit even on the Government's calculation. **SO FAR AS ANY INFERENCE WAS TO BE DRAWN FROM THE NEARNESS OF THE RESPECTIVE DATES OF THE RECEIVER'S RECEIPTS,**

THE DEEDS OF THE ENTRYMEN TO COBBAN AND THE DEEDS OF COBBAN TO CLARK, IT WAS AS OPEN TO THE OFFICERS OF THE GOVERNMENT AS TO CLARK, IF INDEED HE KNEW ANYTHING ABOUT THOSE DATES, YET THEY SEEM TO HAVE SUSPECTED NOTHING, AND HE WAS ADVISED BY REPUTABLE COUNSEL THAT THE TITLES WERE GOOD, AND BOUGHT ONLY ON HIS ADVICE. \* \* \* IT IS ARGUED, FURTHER, THAT CLARK'S INSPECTOR MUST HAVE GONE UPON THE LAND ABOUT THE TIME OF THE ENTRIES IN ORDER TO DO THE NECESSARY WORK OF ESTIMATING THE TIMBER. IF, FOR THE PURPOSE OF ARGUMENT, WE ASSUME THAT KNOWLEDGE OF A TIMBER INSPECTOR OF FACTS AFFECTING THE TITLE, WITH WHICH HE HAD NOTHING TO DO, WAS CHARGEABLE TO CLARK, STILL THE KNOWLEDGE IS A MERE GUESS. THERE WAS NOTHING PRESENT OR REQUIRED TO BE PRESENT ON THE FACE OF THE EARTH TO INDICATE WHEN THE ENTRY TOOK PLACE. WE CANNOT INFER FRAUD MERELY FROM MORE OR LESS FAMILIAR RELATIONS BETWEEN SOME OF CLARK'S AGENTS AND COBBAN. When suspicion is suggested it easily is entertained. But, bearing in mind, as was said in *United States v. Detroit Timber and Lumber Co.*, *supra*, that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF DOUBT**, and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

**200 U. S., 321, U. S. v. Detroit Lumber Co.:**

The facts in this case are stated in the opinion as follows:

“The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.

“The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a *bona fide* purchaser from the former company.”

The Court held, page 329, that the entrymen were in fraud. The sole questions then left was the good faith *vel non* of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

“In their brief counsel for the Government say:  
“We claim that the law as laid down in **Haw-**

ley v. Dillon, that one who takes title before the issuance of patent, cannot claim to be a bona fide purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.'

"We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. *Jones v. Simpson*, 116 U. S., 609, 615. He is not bound to make a searching examination of all the account books of the vendor, nor to hunt for something to cast a suspicion upon the integrity of the title. \* \* \*

"In the light of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

"Now, what is the law controlling under these circumstances? Much reliance is placed by the



Government on *Hawley v. Diller*, 178 U. S., 476, which, affirming prior cases, holds that an entryman under the Timber Act acquires only an equity, and that a purchaser from him cannot be regarded as a *bona fide* purchaser within the meaning of the act. \* \* \*

\* \* \* It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman and will in due course issue to him a patent. He is the equitable owner of the land. It becomes subject to state taxation, and under the control of State laws in respect to conveyances, inheritances, etc. *Carroll v. Safford*, 3 How., 441; *Witherspoon v. Duncan*, 4 Wall. 210; *Simmons v. Wagner*, *supra*; *Winona and St. Peter Land Co. v. Minnesota*, 159 U. S., 526; *Cornelius v. Kessel*, 128 U. S., 456; *Hastings & Dakota R. R. Co. v. Whitney*, 132 U. S., 357; *Benson Mining Co. v. Alta Mining Co.*, 145 U. S. 428.

"Indeed, in some of the opinions of this Court, emphasizing the value of a receiver's receipt, there are expressions which seems to underestimate the significance of a patent. *Wisconsin Central R. R. Co. v. Price County*, 133 U. S., 496, 510; *Deseret Salt Co. v. Tarpey*, 142 U. S., 241, 251. \* \* \*

197 U. S., 200, *United States v. Stinson*:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been

defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and it is a good defense that the title has passed to a bona fide purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. \* \* \*

"*United States v. Burlington & Missouri River R. R. Co.*, 98 U. S., 334, 342; *Colorado Coal Co. v. United States*, *supra*, p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

"'But it is not such a fraud as prevents the passing of the legal title by the patents. It follows that to a bill in equity to cancel the patents upon these grounds alone the defense of a bona fide purchaser for value without notice is perfect.' *United States v. Marshall Mining Co.*, 129 U. S., 579, 589; *United States v. California, Etc., Land Co.*, 148 U. S., 3, 41; *United States v. Winoona, Etc., Railroad Co.*, 165 U. S., 463, 479."

**RESUME.**

To resume, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the **Clark case** in these words:

“The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud.” “The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect**. It is recognized in the act of March 3, 1891, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.**”

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as complainant in the suit to prove that fraud which was alleged in the bill and that notice of fraud which was alleged in the bill—namely, notice through Nat Wasey and James M. Boyd.

In support of these contentions we wish to direct the Court's attention to the following authorities:

- 121 U. S., 325, Maxwell Land Grant Case:  
 172 Fed., 950, United States v. Barber Lum-  
 ber Company.  
 102 U. S., 372, United States v. Atherton.  
 Harrison v. Nixon, 9 Peters, 503.  
 Boone v. Childs, 10 Peters, 209.  
 Byers v. Swiget, 19 Howard, 309.  
 Rubber Co. v. Goodyear, 9 Wallace, 793.  
 United States v. Tichenor, 12 Fed., 425.  
 Phelps v. Elliott, 35 Fed., 461.  
 Platt v. Battier, 34 U. S. (9 Peters), 405.  
 Blandy v. Griffith, Fed. Cases, No. 10,529.  
 Grosvenor v. Dassiell, 25 U. S. App., 227, 27  
 L. R. A., 67.  
 Eyre v. Patter, 56 U. S., 42 (15 Howard).  
 98 U. S., 69 United States v. Throckmorton.

Although the foregoing authorities seem to leave no doubt of its obligation so to do, complainant made no serious attempt to prove up its case as alleged in its bill, and made no serious attempt to show that either J. M. Boyd or Nat Wasey was ever on the land in dispute, or knew whether the entryman had complied with the law. Of this more infra.

Moreover, we believe that the Government failed to show any fraud in the entryman. The entry was made under the provisions of Sections 2289-2290 of the United States Revised Statutes, which sections read as follows:

“Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has

filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter a quarter section, or a less quantity of unappropriated public lands, to be located in a body, in conformity to the legal subdivisions of the public land; but no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory shall acquire any right under the homestead law, and every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land already so owned and occupied, exceed in the aggregate one hundred and sixty acres."

**Section 2290, U. S. R. S.:**

"That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer, and file in the proper land office, an affidavit that he or she is the head of a family, or is over twenty-one years of age; and that such application is honestly and in good faith made, for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation, necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation or syndicate in making such entry, nor in collusion with any persons, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter same for the purpose of specula-

tion, but in good faith, to obtain a home for himself or herself, and that he or she has not, directly or indirectly, made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation or syndicate whatsoever, by which the title which he or she might acquire from the Government of the United States, should enure in whole or in part to the benefit of any person except himself or herself, and upon filing such affidavit with the register or receiver, on payment of \$5.00, when the entry is not more than eighty acres, and upon payment of \$10.00 when the entry is for more than 80 acres, he or she shall thereupon be permitted to enter the amount of land specified."

What Boyd did is thus told by him when as a witness he took the stand and testified on behalf of the Government (Rec., p. 168):

Q. After making this entry did you put any improvements on the land?

A. Yes, sir.

Q. Of what did those improvements consist?

A. **Dwelling house, front porch and side gallery.**

Q. How much did it cost you?

A. I couldn't tell you. I cut the lumber myself and hauled it and built it with two other men.

Q. About what did it cost you?

A. Somewhere about \$20 or \$25.

Q. Did you put up any other buildings?

A. No, sir.

Q. During the life of your entry did you clear and cultivate any land?

A. I did.

Q. How much?

A. Something over one acre fenced. I cultivated that acre.

Q. What did you plant on that acre?

A. Peas and sweet potatoes. Raised a crop of peas and planted sweet potatoes.

Q. Did you ever gather any sweet potatoes?

A. I did not. I cultivated some peas and harvested them. The potatoes I turned hogs on them.

Q. Did you ever commute your entry?

A. I did.

Q. How long after you made your entry?

A. I could not tell exactly; my papers showed about 14 months.

Q. Between the time you made your entry and the time you commuted it how often did you visit this land?

A. I could not say how often. Frequently. Once every 3 months anyway.

Q. You are prepared to swear under oath that you visited this land once every three months?

A. Me and my witnesses.

Q. How long did you stay on these visits?

A. I made a practice of staying about three days.

Q. Do you keep any furniture in this place?

A. Kept a place for sleeping purposes.

Q. What do you mean by a "place"?

A. Cots. A place for rest.

Q. Did you keep them there or take them with you?

A. Sometimes I left them there; while I was at work on the crop I would leave our cots there. But after the crop season was over we might have taken them home.

Q. Any other furniture there; bureau or stoves?

A. Nothing but plow tools, harness, etc., to cultivate the land.

Q. Where was your actual residence during this time?

A. I was living at my father's.

Q. This was about three miles from your homestead entry?

A. Yes, sir.

Q. When you would go out on these quarterly trips to visit your entry would you spend the three days you stayed there in cultivating and working on the place, or some other way?

A. I spent what time it would take to cultivate the stuff that it needed.

Q. What else did you do?

A. Hunted, and passed off the time the best way we could. That was our place of staying for the three days there.

Q. What did you do most; hunt or cultivate?

A. I suppose that most of it was really hunting.

Q. Isn't it a fact that you took advantage of these trips simply to go out and have a good time with your friends?

A. No, sir; my intention was to prove up the homestead according to law.

Q. You were, then, combining business with pleasure in doing the hunting?

A. Not particularly. It was the business called me there. I spent the rest of the time I was not engaged otherwise in hunting.

(P. 171) Cross-examination:

Q. At the time you made your entry you intended in good faith to go on this land and make it your residence and make a homestead?



A. I certainly did.

Q. You thought all the time you were complying fully with the law?

A. I certainly did, and a little more than was necessary.

Q. You went there and tended regularly to the crop while it was growing?

A. I certainly did.

Q. You did everything necessary to bring that crop to maturity?

A. I did; and furthermore I planted an orchard.

Q. You fenced your land up?

A. I certainly did.

Q. What did you do with your improvements after selling the land to the Wright-Blodgett Company?

A. I sold them.

Q. How much did you get for them?

A. I disremember what I got. I sold to M. P. Carruth. He had a homestead in Section 10, I think.

Q. You kept your house in good repair and cleaned up during the life of your entry?

A. I certainly did.

Q. Every time you left your homestead with the intention of coming back to further raise your crop and attend to it?

A. Yes, sir.

(P. 174) Recross-examination:

Q. As a matter of fact, you did acquire another homestead some little time after you gave up this one, did you not?

A. Certainly.

Q. You have a home of your own now and are

living on it, and you acquired it some little time after giving up the first one, and it is a separate home from your father's home, is it not?

A. It is.

Q. Perhaps you used some of the money gained by the selling of your first homestead to buy the second one?

A. I used the same money to commute it with.

This, as it appears to us, constituted compliance with the law. Boyd was in good faith seeking to acquire a homestead. He at no time allowed six months to elapse without staying and residing upon his entry. He made the entry "with the idea of having a home there" for himself. He considered it his home. He erected a house upon the premises, slept upon them from time to time, and worked upon them continuously, as is shown in the foregoing testimony. It is true that he worked at his mill at Cora, but he did this because the land he entered was poor and because milling was his trade. Surely the Homestead Law does not contemplate that an entryman's trade should be abandoned.

The homestead law, as we read it, contemplates that the entryman may go away from his land and work out for himself or other people. Its only prohibition is against an abandonment exceeding six months in duration at any one time. No such abandonment can be attributed to Boyd.

The Court should bear in mind that Boyd was a Government witness, and was, therefore, testifying as favorably for complainant as the facts would allow.

Before proceeding further, it might not be amiss to give a brief history of the advent of the Wright-Blodgett Company, Limited, into Louisiana, and of its method of doing business.

### **NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.**

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec. pp. 103-104.) It shows that when that company first went into Louisiana it secured from one of the best available firm of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by Ben Foster, a witness for the complainant, who swears as follows (Rec., p. 102):

Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?

A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.

Q. Who are J. D. Lacey & Company?

A. Real estate man, with an office in New Orleans

Q. Do they or do they not make a business of making these timber cruises or estimates?

A. It is their principal business, or was, at that time.

Q. How do they stand in the business and how are their estimates considered by timber people?

A. Of the best.

**Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without any further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 103.)**

Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?

A. That is the usual case, the usual method of doing business.

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no attention to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 111):

Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.

Q. (9) Do you make any statement as to the condition of the house?

A. None whatever; I do not.

Q. (10) Do you pay any particular attention to the condition of the house?

A. Not to the house, simply as to how its land is cleared.

Q. (11) You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

Q. That is the custom observed among all timber estimators?

A. Yes.

(Page 113):

Q. (8) In going upon these lands, would you make any investigation for the purpose of ascer-

taining whether the entryman had complied with the laws so as to entitle them to a final receipt?

A. I never did.

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homestead would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the **final receipt**, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that the Wright-Blodgett Company, Limited, **followed that custom**, for Foster tells us that he never made such an investigation, and at record, page 95, it appears that he was for some years an employee of the Wright-Blodgett Company, Limited, although at the time he gave this testimony he was and for a long time had been employed by other persons.

The testimony further is that the Wright-Blodgett Company, Limited, defendants herein, made it a custom

to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana, (Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

Wingate testified (Tr., p. 165):

Q. You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; that were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.

Q. They did not purchase any lands until Pujo & Moss approved the title?

A. That was my understanding.

Foster testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 111):

Q. At the time you first went into the office, however, the custom was to submit all titles,

whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?

A. Yes, sir; all titles.

Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?

A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

C. D. Moss testified (Rec., p. 116):

Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?

A. Yes, sir; my recollection is that the employment began about 1899.

Q. What was the nature of that employment?

A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.

Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?

A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts



of title to be brought back to the office, after the deeds were acquired from the different owners, and these deeds were carried on the abstract, so that our opinions would show our opinion of the titles in the Wright-Blodgett Company; in some cases, I recall, there were two written opinions.

(Rec., p. 118):

Q. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett Company?

A. I think all but the first transaction. My recollection is that when the company first organized it purchased a very large tract of land from parties in Chicago, the Fairbanks people, and according to the best of my recollection that purchase was made before Pujo & Moss ever saw the abstract of title.

Q. In cases where the Wright-Blodgett Company would purchase direct from entrymen or Government land, would you be called upon to pass upon such title where there was no transfer nor intervening transaction?

A. That is my recollection, that the abstract would be brought in either before or after issuance of the patent; the abstract would always be brought in showing the issuance of the patent, or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, written opinions would be given, and then after the deed was acquired in the name of the Wright-Blodgett Company, either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards, Mr. Kelley explained to us that he wanted opinions

from our firm on Wright-Blodgett every purchase to show that the so that in the event Company was the rightful owner, ten opinions could be used at of sale subsequently these writ-

(Page 119):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the land had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 121):

Q. (30) Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?

A. No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.

(Page 123):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to the Assistant District Attorney, you explained the

attitude of the Calcasien bar prior to the coming of the Government inspectors into Calcasien Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 122 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified, on page 125, that his firm had actually passed upon the title here in dispute, and the written opinion of the firm approving the title is in evidence. (Rec., p. 52.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they bought it on the faith of the general estimate made by

J. D. Lacey & Company, without making any special investigation of the land. It appears, further, that the attorneys for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases**, where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the Wright-Blodgett Company's situation? They knew from the opinion of Pujo & Moss that the title was good. They knew from the estimate made by J. D. Lacey & Company exactly what timber and what property they were buying. There was no occasion for further investigation, a fact which the foregoing quotation from Wingate's testimony emphasizes, he having stated that his instructions were to send abstracts to Pujo & Moss, and if they approved the titles, the draft would be paid without further todo. It further appears that even had a special investigation been made, that investigation would have been made with a view solely to substantiating the statements made in the estimate of J. D. Lacey & Company as to the amount of timber standing on the land. And it appears further that the only information secured from such an additional investigation by the Wright-Blodgett Company, Limited, would have been a timber estimator's report, which re-

port would have contained no information on the subject of compliance **vel non** by the homesteader with the Homestead law. On this subject **Foster**, page 113, Question 8, testified as follows:

Q. In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the law so as to entitle him to a final receipt?

A. I never did.

The foregoing is particularly important in this case, for the reason that the evidence adduced by the Government itself conclusively shows that all of the outward signs of compliance with the Homestead laws were taken by Mr. Boyd, the entryman. Thus, the Government's own witnesses show that Boyd went upon the land and built upon same a good house with a front porch and a side gallery around this house; he built a fence and he cultivated about an acre of land, planted an orchard. His testimony is that he kept at work straight along on this land and tended his crop. (P. 169.)

His testimony has been quoted **supra**.

With all of these improvements made and kept up on the land, it is quite evident that the ordinary timber cruiser passing over the land and observing a house, a growing crop, a fence, an orchard, etc., etc., would have nothing to put him on notice that the homesteader had not fully complied with the law; and this is particularly true when we bear in mind the fact that timber cruisers pay no particular attention to improvements. To this situation the following language used by this Court in the Clark case is peculiarly appropriate:

200 U. S., 601, U. S. v. Clark:

"It is argued, further, that Clark's inspector must have gone upon the land about the time of the entries, in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of the timber inspector of facts affecting the titles with which he had nothing to do was chargeable to Clark, still the knowledge is a mere guess; there is nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark's agents and 'Cobba.'"

**BOYDS' ENTRY AND FINAL PROOF WAS IN  
STRICT ACCORDANCE WITH THE FORMS  
PRESCRIBED BY LAW AND DECEIVED  
THE TRAINED GOVERNMENT EX-  
PERTS.**

Not only was all of the foregoing true, but the evidence shows that Boyd made his final proof in due form, swearing and having his witnesses swear that he had established his actual residence on the land, had cultivated two acres and had put improvements thereon. The proof was so satisfactory on its face that the Government, after issuing the final receipt to Boyd, on May 24, 1901, proceeded (after presumably making further investigation, in order to ascertain that the entry was correct in all

respects), to issue a patent some eight months later, to-wit, on Feb. 15, 1902. This patent is the patent now assailed. **This patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded.** (Rec., p. 26.) That is to say, the Government issued the patent after being informed by the record of the sale to the Wright-Blodgett Company, Limited.

The proof was apparently so full and correct that as the bill says (Rec., p. 7):

“The said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements so falsely and fraudulently given and made by the said defendant and his said witness, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement, and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and the issuance of the United States patent therefor, by the said officers of the United States, as hereinabove set forth, and the delivering of the said patent to the defendants.”

Our natural inquiry is: If the proof was so full as to deceive the skilled experts of the United States Land

Office, whose **DUTY** it is to investigate and to hunt for grounds of doubt, why should the Court infer that it did not equally deceive the Wright-Blodgett Company, Limited, upon whom no such duty was imposed? This record gives no satisfactory answer to this inquiry. On the contrary, it appears that there was nothing in the way in which the Wright-Blodgett Company, Limited, went about making its purchase, and nothing in the way in which Elijah Z. Boyd, the entryman, went about making and commuting his entry, which could or should, under normal circumstances, have placed the Wright-Blodgett Company Limited, upon notice of any alleged fraud on the entryman, Elijah Z. Boyd, and there is no proof in this record that this purchase was made other than in the normal manner.

But we are told by the bill that the Wright-Blodgett Co., Ltd., had this knowledge through J. M. Boyd and Nat Wasey. Let us get the dates in mind and then examine into the correctness of this assertion. The Wright-Blodgett Company, Limited, acquired this land (Rec., p. 26) on June 21, 1901. The record affirmatively shows that at that time J. M. Boyd was not, and had never been in the employ of the defendant. We base this statement upon the testimony of the Government's witness, Foster. He swears, at page 95. that he was employed by the Wright-Blodgett Company, Limited, in the fall of 1901. On page 100 he swore that for several years prior to that time he had an office in Lake Charles, Louisiana, in the immediate neighborhood of the office of the Wright-Blodgett Company, Limited, and that he knew the per-



sons in charge of the latter's office. On page 104 he swore:

Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?

A. He was never in the employ of the company, while I was with them, and I don't believe before I was with them.

Another Government witness, Elijah Boyd, swore, at p. 171, as follows:

Q. (51) I see that J. M. Boyd is a witness on this deed? Did he have anything to do with the sale of this land to Wright-Blodgett Company?

A. He did not.

J. M. Boyd may, therefore, be eliminated from the discussion. He was not an agent of the Wright-Blodgett Company, Limited, but was an agent of the United States an United States Commissioner. No knowledge of any alleged frauds in the entryman can be held to have been acquired by the Wright-Blodgett Company, Limited, through him.

As to Nat Wasey and his connection with the transaction, the record shows that at the time of the trial of this case he was dead. (R., p. 92.) There is not one single line of testimony anywhere in this record going to show that Wasey was ever on the land here in controversy, or had any knowledge of said land, beyond the information given in the estimate of J. D. Lacey & Company.

If we exclude the general, and because general, valueless statements to the effect that Wasey was in the parish, the sole testimony going to connect Nat Wasey

with the land in dispute is the testimony of the entryman, Boyd, which reads as follows (Rec., p. 170):

Q. Did you ever part with whatever title you had in that land?

A. Yes, sir.

Q. To whom?

A. I sold to Nat Wasey; he was supposed to be representing the Wright-Blodgett Company.

Q. To whom did you sell the land—Wright-Blodgett Company or Nat Wasey?

A. Sold to Nat Wasey, I suppose.

Q. Who acted as agent for the Wright-Blodgett Company?

A. Mr. Wasey.

Q. How far did he live from your place?

A. About twelve mile.

Q. Did he know you pretty well?

A. Just a short while.

**Q. WAS HE EVER ON THIS LAND YOU ENTERED BEFORE YOU SOLD IT TO WRIGHT-BLODGETT COMPANY?**

**A. I CANNOT SAY THAT HE WAS; I NEVER SAW HIM.**

Q. Had he been in that vicinity?

A. He had been in that section; I couldn't say he had been on the land.

Q. When he purchased this land from you did he make any inquiry as to whether you had complied with the homestead laws?

**A. HE DID NOT.**

(Rec., p. 174):

Q. When did Nat Wasey first speak to you about purchasing the land?

A. I couldn't say, positively.

Q. How long before you made the sale to him?

A. I couldn't say.

Q. Approximate it.

A. About a month after I had commuted it; I couldn't be positive.

Q. Now, Mr. Boyd, you understand you are under oath and are responsible for what you say. I want to ask you whether it is not true that Mr. Wasey, or some other agent of the Wright-Blodgett Company, approached you in regard to the sale of this land before you commuted it?

A. He did not, not to my knowledge.

Q. He may have, without your remembering it?

A. I don't think he did.

Far from sustaining the Government's contentions, this evidence, taken in connection with the other evidence, goes far to prove that Wasey had no reason to believe or suspect that Boyd had not fully complied with the law. If Wasey actually visited the land, and from the entryman's testimony it would appear that he did not, he saw on it a growing crop of peas and sweet potatoes, hogs, fences, a house with front and side porches, an orchard, and general signs of habitation and cultivation. He was not bound to seek for grounds of doubt. His business as a timber estimator required no more of him than a notation that there was a house and fields on the forty. This Court will not presume that he visited the land, nor will it presume that in this instance he did more than his business as a timber estimator required of him; nor will this Court presume that the Government's witness, Boyd, was not telling the truth when he swore that Wasey made no inquiry as to whether he, Boyd, had or had not complied with the homestead law. On the contrary, since Boyd was complainant's witness, and since Boyd's testimony is not contradicted by that

of any other witness, it would seem to appear affirmatively from this record that Wasey made no inquiry as to compliance **vel non** with the homestead law, but that he was content with the issuance to Boyd of the final receipt by the Government land experts.

This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been emphatic and its decisions have been uniform. Some of the language used is as follows:

**121 U. S. 381, Maxwell Land Grant Case:**

“We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on

which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

**123 U. S., 307, Colorado Coal & Iron Co. v. United States:**

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained, from the Land Office, or the officers who had wit-

nessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the Government to produce so much of this further evidence as could be obtained, and that, in its absence, the United States had not made all the proof of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

133 U. S., 193, *U. S. v. Hancock*:

The syllabus reads:

"Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for \$1500.00, though it may be the subject of criticism, is not the **CLEAR, CONVINCING AND UNAMBIGUOUS PROOF** of fraud which is required to set aside a patent of public land."

197 U. S., 200, *United States v. Stinson*:

The syllabus reads:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a *bona fide* purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties."

**214 Fed., 523, Connor v. U. S.:**

"To authorize a Court to set aside and cancel a patent to lands issued by the United States, on the ground of fraud, the evidence must be clear, unequivocal and convincing, and it cannot be done on a bare preponderance of evidence which leaves the issue of fraud in doubt."

A reading of this record will, we submit, convince this Court that there is no such clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright Blodgett Company, Limited.

It must not be forgotten that a patent is the highest form of evidence as against the Government, and that this Court has repeatedly held that it will not annul a patent unless the evidence is absolutely conclusive and makes the annulment thereof imperative. We submit that no such case is here presented. It is not only not shown that the Wright-Blodgett Company was in bad faith in purchasing this land, but the Wright-Blodgett Company has succeeded in showing that it was in good faith in doing so. The testimony is that they had a large timber estimate of the entire tract, and that it was the custom of timber purchasers to buy on the faith of such estimates. There is no testimony to show that any special investigation of this particular tract was made, and there is affirmative testimony to show that before making the purchase the titles to the land were tendered by the Wright-Blodgett Company to Messrs. Pujo & Moss, one of the best known law firms in the State of Louisiana, and that that firm advised them that in all cases where a final receipt had issued, they were perfectly safe in accepting the title without further investigation.

Under the circumstances, we submit that the good faith of the Wright-Blodgett Company is beyond question, and that against it the suit to annul the patent must be dismissed. We ask for judgment accordingly.

**J. BLANC MONROE,**

**MONTE M. LEMANN,**

**A. R. MITCHELL,**

**Solicitors for Defendants.**

January, 1915.



FILED  
JAN 8 1915  
JAMES D. MAHER  
CLERK

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**Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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**No. 155**

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**WRIGHT-BLODGETT COMPANY, LIMITED,**

**(Alkon, Jr., Case,)**

**VERSUS**

**THE UNITED STATES OF AMERICA.**

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**J. BLANC MONBOE,**

**MONTE M. LEMANN,**

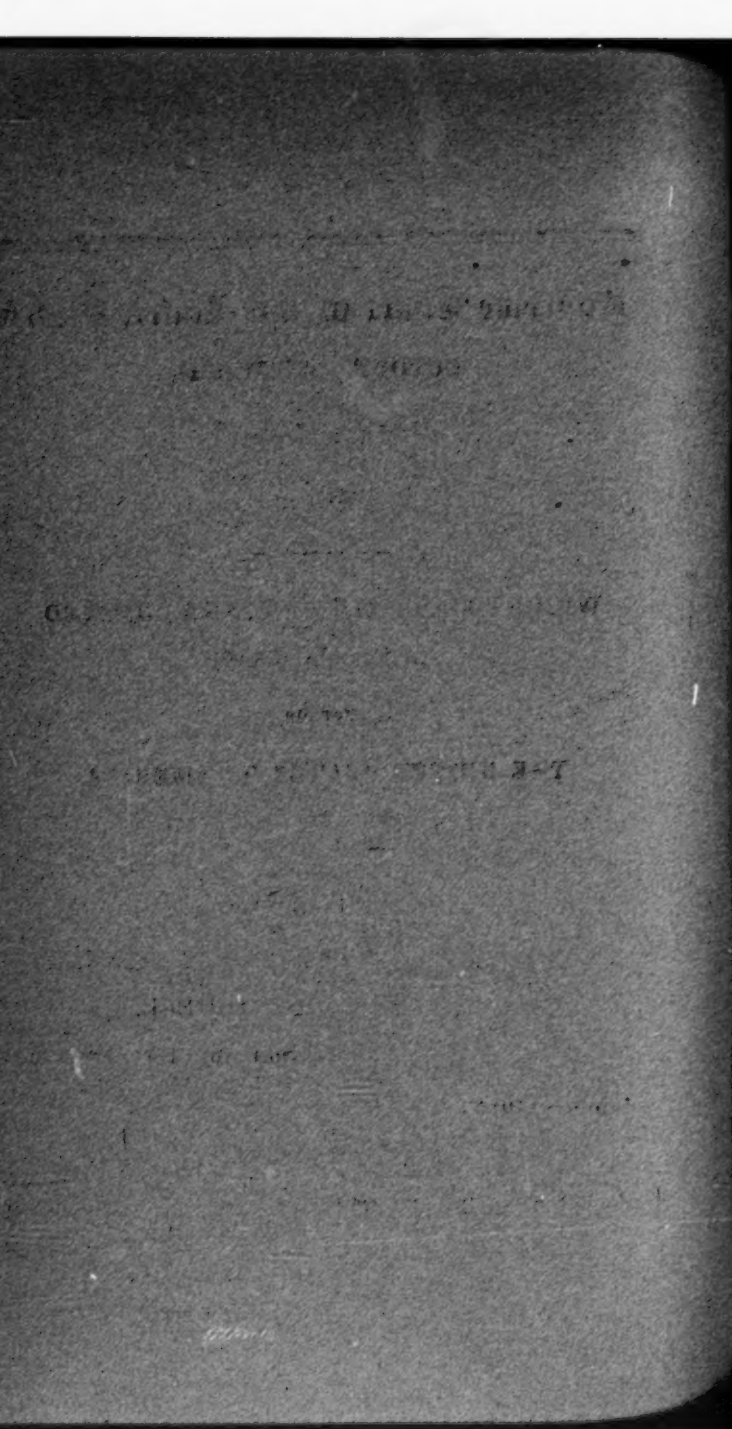
**A. R. MITCHELL,**

**Solicitors for Defendants.**

**January, 1915.**

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**H. P. ANDERSON Ptg. Co., BRIDGE PRINTERS, 515 NATCHES ST.**



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# **Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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**No. 154.**

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**WRIGHT-BLODGETT COMPANY, LIMITED,**

**(Aiken, Jr., Case,)**

**versus**

**THE UNITED STATES OF AMERICA.**

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## **SYLLABUS.**

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.  
200 U. S., 601, *United States v. Clark*.  
200 U. S., 321, *U. S. v. Detroit Lumber Co.*
2. When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which com-

mands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.

121 U. S., 381, **Maxwell Land Grant Case.**

123 U. S., 307, **Colorado Coal Co. v. U. S.**, 133 U. S., 193.

197 U. S., 200, **U. S. v. Stinson.**

3. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strong presumption arises that the entryman's vendee was likewise deceived.
4. When the United States, while attempting to discharge its obligation to show actual notice on the part of the defendant of the fraud in the entryman places the entryman on the stand and the latter swears that he took an agent of the defendant to the land, pointed out to him the improvements which he, the entryman, had placed upon it and "assured" said agent that everything which the law required had been done, the United States not only fails to prove notice in the defendant but affirmatively establishes its good faith and absence of notice.

## STATEMENT.

This is a suit by the United States Government to annul a land patent on the ground that the homestead entryman defrauded the Government, in that he did not reside upon, improve and cultivate his land, as required by the homestead laws. The charge of fraud is strictly confined to the failure to reside upon, improve and cultivate. (R., p. 6.) The homestead entryman, **Samuel S. Aiken, Jr.**, is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R. pp. 5 and 9) and it is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt**. The bill then proceeds to charge that the Wright-Blodgett Company, Limited, had knowledge of the fraud in the entryman through its agents J. M. Boyd and Nat Wasey.

The Wright-Blodgett Company, Limited, in its answer sets up that it purchased the land in good faith for value after the issuance to the entryman of his **final receipt**; that if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited**, bought and recorded its purchase, they issued the patent. It points out that the fact that the United States officials had accepted the commutation and other proofs of Allen and had issued a final receipt

to him, was sufficient to justify it in concluding that the homestead law was complied with. This Court has in terms held that "it was not bound to look for grounds for doubt." **Clark case; Detroit Lumber Case, 200 U. S.** It stands flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman.

The recent decisions of this tribunal leave no room for doubt as to the correctness of the appellants' contentions that the title of a purchaser in good faith, buying on the faith of a final receipt, is not affected by fraud in the entryman. These decisions are as follows:

**200 U. S., 601, United States v. Clark:**

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

"This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a *bona fide* purchaser, excepted as such from the invalidation of the patents by the act, and denied the material



allegations of the bill. Voluminous evidence was taken, and at the hearing the bill was dismissed by the Circuit Court. 125 Fed. Rep., 774. That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry (125 Fed. Rep., 776, 777), and considering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark. One Judge dissented on the ground that Clark knew enough to be put upon inquiry. 138 Fed. Rep., 294. The United States then appealed to this Court.

“The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER’S RECEIPT**, but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. *Landes v. Brant*, 10 How., 348; *Bush v. Cooper*, 18 How. 82; *Myers v. Croft*, 13 Wall., 291; *United States v. Detroit Timber and Lumber Co.*, 200 U. S., 322. See, further, *Ayer v. Philadelphia and Boston Face Brick Co.*, 159 Massachusetts, 84. But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch

**AS HE DID NOT PURCHASE ON THE FAITH OF THE PATENTS**, he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

**"WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals, **THAT THE ORIGINAL FRAUDS ARE MADE OUT**, although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co.**, 200 U. S., 321. The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS.** The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT.** It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a *bona fide* purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

• • • • •  
 "• • • There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He

dealt as a purchase 7

the market price, and the Government's case with Cobban, and paid him IN FERENCE WA, and a substantial profit even on THE NEARNESS calculation. SO FAR AS ANY DATES OF THAS TO BE DRAWN FROM THE DEEDS OFSS OF THE RESPECTIVE BAN AND THEHE RECEIVER'S RECEIPTS, CLARK, IT WAS OF THE ENTRYMEN TO COB- OF THE GOVERE DEEDS OF COBBAN TO INDEED HE K AS OPEN TO THE OFFICERS THOSE DATES, RNMENT AS TO CLARK, IF SUSPECTED NOT KNEW ANYTHING ABOUT VISED BY REP YET THEY SEEM TO HAVE THE TITLES W NOTHING, AND HE WAS AD- ONLY ON HIS A PUTABLE COUNSEL THAT GUED, FURTHER WERE GOOD, AND BOUGHT ADVICE. \* \* \* IT IS AR- TOR MUST HAVE ER, THAT CLARK'S INSPEC- ABOUT THE TIVE GONE UPON THE LAND ORDER TO DO TIME OF THE ENTRIES IN ESTIMATING T THE NECESSARY WORK OF PURPOSE OF THE TIMBER. IF, FOR THE THAT KNOWLED ARGUMENT, WE ASSUME TOR OF FACTS EDGE OF A TIMBER INSPEC- WITH WHICH IS AFFECTING THE TITLE, WAS CHARGEAL HE HAD NOTHING TO DO, KNOWLEDGE ISBLE TO CLARK, STILL THE WAS NOTHING IS A MERE GUESS. THERE BE PRESENT ON PRESENT OR REQUIRED TO TO INDICATE N THE FACE OF THE EARTH PLACE. WE CA WHEN THE ENTRY TOOK LY FROM MORE ANNOT INFER FRAUD MERE- TIONS BETWE OR LESS FAMILIAR RELA- AGENTS AND CC EEN SOME OF CLARK'S OBAN. When suspicion is sug- gested it easily is entertained. But, bearing in mind, as was said in United States v. Detroit Tim-

ber and Lumber Co., *supra*, that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF DOUBT**, and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

**200 U. S., 321, U. S. v. Detroit Lumber Co.:**

The facts in this case are stated in the opinion as follows:

"The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.

"The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a *bona fide* purchaser from the former company."

The Court held, page 329, that the entrymen were in fraud. The sole questions then left was the good faith vel non of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

“In their brief counsel for the Government say:

“‘We claim that the law as laid down in **Hawley v. Dillon**, that one who takes title before the issuance of patent, cannot claim to be a bona fide purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.’

“We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. **Jones v. Simpson**, 116 U. S., 609, 615. He is not bound to make a searching examination of all the account books of the ven-

for something to cast a suspicion upon the integrity of the title. \* \* \*

dor, nor to hunt upon the integrity of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

"In the light of the law controlling under these circumstances? Much reliance is placed by the Government on *Hawley v. Diller*, 178 U. S., 476, which, affirming the Timber Act acquires only an equity, man under the Act a purchaser from him cannot be regarded as a bona fide purchaser within the meaning of the act. It becomes necessary to inquire what

" \* \* \* The effect of a final receiver's receipt and cancellation by the Land Department is the significant effect of a receipt. The receipt is an acknowledgment of such by the Government that it has received full pay for the land, that it holds the legal title in trust for him a patent. He is the equitable owner of the land under the control of State laws in respect to conveyances, inheritances, etc. *Carroll v. Safford*, 3 Emmons v. Wagner, *supra*; *Winona Land Co. v. Minnesota*, 159 U. S., 428; *St. Peter v. Kessel*, 128 U. S., 456; *Hastings*, 526; *Cornelius Co. v. Whitney*, 132 U. S., 357; *Dakota R. R. Co. v. Alta Mining Co.*, 145 U. S., 428.

"Indeed, in some of the opinions of this Court, emphasizing the value of a receiver's receipt, there are expressions which seems to underestimate the significance of a patent. Wisconsin

**Central R. R. Co. v. Price County**, 133 U. S., 496, 510; **Deseret Salt Co. v. Tarpey**, 142 U. S., 241, 251. \* \* \*

**197 U. S., 200, United States v. Stinson:**

“The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

“In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and it is a good defense that the title has passed to a bona fide purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. \* \* \*

“**United States v. Burlington & Missouri River R. R. Co.**, 98 U. S., 334, 342; **Colorado Coal Co. v. United States**, *supra*, p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

“‘But it is not such a fraud as prevents the passing of the legal title by the patents. It fol-

lows that to a bill in equity to cancel the patents upon these grounds alone **the defense of a bona fide purchaser for value without notice is perfect.**' **United States v. Marshall Mining Co.,** 129 U. S., 579, 589; **United States v. California, Etc., Land Co.,** 148 U. S., 3, 41; **United States v. Winoona, Etc., Railroad Co.,** 165 U. S., 463, 479.'

### RESUME.

To resume, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the **Clark case** in these words:

"The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud." "The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect.** It is recognized in the act of March 3, 1891, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.**"

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as com-



plainant in the suit, to prove that the Wright-Blodgett Company, Limited, had actual notice of the alleged fraud in the entryman, and since the bill of complaint specifically charged such actual notice through, and only through J. M. Boyd and Nat Wasey, it was incumbent upon the Government, as complainant, to prove that **KNOWLEDGE THROUGH THE MEN NAMED AND NOT OTHERWISE**. An attempt to show such knowledge through any other person or persons would have been clearly inadmissible under the pleadings, and evidence in support of such an attempt should have been excluded from the record.

The law on the subject is as follows:

**121 U. S., 325, Maxwell Land Grant Case:**

This was a suit by the United States to annul a grant of land. This Court said:

“Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside should be successful **only when the allegations on which this attempt is made are clearly stated and fully proved**. In this case the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill,

and the decree of the Circuit Court dismissing it is affirmed."

172 Fed., 950, *United States v. Barber Lumber Company*.

102 U. S., 372, *United States v. Atherton*:

"A bill in chancery to set aside a judgment or decree of a Court of competent jurisdiction, on the ground of fraud, must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the Court or the party injured was misled or imposed upon.

"A bill to set aside or annul a patent of the United States for public lands or to correct it, on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred."

*Harrison v. Nixon*, 9 Peters, 503.

*Boone v. Childs*, 10 Peters, 209.

*Byers v. Swiget*, 19 Howard, 309.

*Rubber Co. v. Goodyear*, 9 Wallace, 793.

*United States v. Tichenor*, 12 Fed., 425.

*Phelps v. Elliott*, 35 Fed., 461.

*Platt v. Battier*, 34 U. S. (9 Peters), 405.

*Blandy v. Griffith*, Fed. Cases, No. 10,529.

*Grosvenor v. Dassiell*, 25 U. S. App., 227, 27

L. R. A., 67.

*Eyre v. Patter*, 56 U. S., 42 (15 Howard).

98 U. S., 69 *United States v. Throckmorton*.

Although the foregoing authorities seem to leave no doubt of its obligation to affirmatively show that the Wright-Blodgett Company, Limited, had knowledge of the alleged fraud in the entryman and had acquired that

knowledge through Nat Wasey or J. M. Boyd, complainant failed utterly to bring such knowledge home to the Wright-Blodgett Company, Limited.

In support of the above statement, it might not be amiss to give a brief history of the advent of the Wright-Blodgett Company, Limited, into Louisiana, and of its method of doing business.

#### **NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.**

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec., pp. 116-117.) It shows that when that company first went into Louisiana it secured from one of the best available firms of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by Ben Foster, a witness **for the complainant**, who swears as follows (Rec., p. 116):

Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?

A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.

Q. Who are J. D. Lacey & Company?

A. Real estate men, with an office in New Orleans

Q. Do they or do they not make a business of making these timber cruises or estimates?

A. It is their principal business, or was, at that time.

Q. How do they stand in the business and how are their estimates considered by timber people?

A. Of the best.

Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without any further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 116.)

Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?

A. That is the usual case, the usual method of doing business.

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so

high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no attention to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 125):

Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.

Q. (9) Do you make any statement as to the condition of the house?

A. None whatever; I do not.

Q. (10) Do you pay any particular attention to the condition of the house?

A. Not to the house, simply as to how its land is cleared.

Q. (11) You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

Q. That is the custom observed among all timber estimators?

A. Yes.

(Page 127):

**Q. (2) IN GOING UPON THESE LANDS.  
WOULD YOU MAKE ANY INVESTIGATION**

**FOR THE PURPOSE OF ASCERTAINING  
WHETHER THE ENTRYMAN HAD COMPLIED  
WITH THE LAWS SO AS TO ENTITLE THEM  
TO A FINAL RECEIPT?**

**A. I never did.**

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homestead would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the **final receipt**, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that even had a timber estimator of the Wright Blodgett Company, Limited, such as Wasey gone upon the land, he would not have paid any particular attention to the entryman's compliance or non-compliance with the law.

The testimony further is that the Wright-Blodgett Company, Limited, defendant herein, made it a custom

to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana, (Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

**Wingate testified (Tr., p. 178):**

**Q.** You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?

**A.** Yes, sir; they were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.

**Q.** They did not purchase any lands until Pujo & Moss approved the title?

**A.** That was my understanding.

**Foster testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 124):**

**Q.** At the time you first went into the office, however, the custom was to submit all titles,

whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?

A. Yes, sir; all titles.

Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?

A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

**C. D. Moss** testified (Rec., p. 129):

Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?

A. Yes, sir; my recollection is that the employment began about 1899.

Q. What was the nature of that employment?

A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.

Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?

A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts



ght back to the office, after the  
of title to be broued from the different owners,  
deeds were acquiere carried on the abstract, so  
and these deeds would show our opinion of the  
that our opinionsht-Blodgett Company; in some  
titles in the Wrige were two written opinions.  
cases, I recall, the

(Rec., p. 132):

Q. Was your office called upon to pass upon all  
deeds and purchases made by the Wright-Blodgett  
Company?

A. I think all but the first transaction. My  
recollection is that when the company first organ-  
ized it purchased a very large tract of land from  
the Fairbanks people, and ac-  
parties in Chicago, st of my recollection that pur-  
cording to the before Pujo & Moss ever saw the  
chase was made here the Wright-Blodgett Com-  
abstract of title. ase direct from entrymen or

Q. In cases w would you be called upon to pass  
pany would purchase where there was no transfer nor  
Government land,ction?

upon such title v recollection, that the abstract  
intervening transn either before or after issuance

A. That is mabstract would always be brought  
would be broughtuance of the patent, or showing  
of the patent; the final receipt, and our opinion  
in showing the isout it, and in some cases, if not  
simply issuance aions would be given, and then  
would be asked as acquired in the name of the  
in all, written opompany, either the same ab-  
after the deed w would be made up and brought  
Wright-Blodgett ation and opinion. Afterwards,  
stract or a new of ed to us that he wanted opinions  
in for our exami  
Mr. Kelley explai

from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that in the event of sale subsequently these written opinions could be used.

(Page 123):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 134):

Q. (30) Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?

A. No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.

(Page 93):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to the Assistant District Attorney, you explained the

attitude of the Calcasieu bar prior to the coming of the Government inspectors into Calcasieu Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 135 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified on page 138 that his firm had actually passed upon the title here in dispute, and the written opinion of the firm approving the title is in evidence. (Rec., p. 52.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they

bought it on the faith of the general estimate made by J. D. Lacey & Company, without making any special investigation of the land, other than the single visit paid to it by Wasey, which visit will be referred to. It appears, further, that the attorney for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases**, where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the doubt? They knew from Wright-Blodgett Company's statement that the title was good from the opinion of Pujo & Moss made by J. D. Lacey & Company. They knew from the estimate and what property the Company exactly what timber agent, Wasey, went upon they were buying. Even if their estimator and paid little for the land, he went as a timber estimator, but confined his attention to the improvements thereon, or no attention to the improvements to the timber located thereon.

On this subject **Foster** as follows:

- Q. In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the law so as to entitle him to a final receipt?
- A. I never did.

The foregoing is particularly important in this case, for the reason that the evidence adduced by the Government itself conclusively shows that all of the outward signs of compliance with the Homestead laws were taken by Mr. Aiken, Jr., the entryman. Thus the Government's own witnesses show that Samuel E. Aiken, Jr., went upon the land and built a house, which he furnished with a cot and a bench, a chimney, cooking utensils and a wash basin, and in which he kept his saw and hammer and plough tools. He cleared something over **an acre** of ground, and in his clearing planted a crop of peas and corn. The house was kept in order and the whole establishment looked after generally. The testimony on this subject is on Tr., pp. 184-185.

With all of these improvements made and kept up on the land, it is quite evident that the ordinary timber cruiser passing over the land and observing a house, a growing crop and a place kept in order, etc., would have nothing to put him on notice that the homesteader had not fully complied with the law; and this is particularly true when we bear in mind the fact that timber cruisers pay no particular attention to improvements. To this situation the following language used by this Court in the Clark case is peculiarly appropriate:

**200 U. S., 601, U. S. v. Clark:**

"It is argued, further, that Clark's inspector must have gone upon the land about the time of the entries, in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of the timber inspector of facts affecting the titles with which

he had nothing to do was chargeable to Clark, still the knowledge is a mere guess; there is nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark's agents and Cobban."

**AIKEN'S ENTRY AND FINAL PROOF WAS IN  
STRICT ACCORDANCE WITH THE FORMS  
PRESCRIBED BY LAW AND DECEIVED  
THE TRAINED GOVERNMENT EX-  
PERTS.**

Not only was all of the foregoing true, but the evidence shows that Aiken made his final proof in due form, swearing and having his witnesses swear that he had established his actual residence on the land, had cultivated two acres and had put improvements thereon. The proof was so satisfactory on its face that the Government, after issuing the final receipt to Aiken, on Sept. 18, 1901, proceeded (after presumably making further investigation, in order to ascertain that the entry was correct in all respects), to issue a patent some nine months later, to-wit, on April 1, 1902. This patent is the patent now assailed. This patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded. (Rec., p. 25). That is to say, the Government issued the patent after being informed by the record of the sale to the Wright-Blodgett Company, Limited.

The proof was apparently so full and correct that as the bill says (Rec., p. 8):

"The said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements so falsely and fraudulently given and made by the said defendant and his said witness, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement, and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and the issuance of the United States patent therefor, by the said officers of the United States, as hereinabove set forth, and the delivering of the said patent to the defendants."

Our natural inquiry is: If the proof was so full as to deceive the skilled experts of the United States Land Office, whose **DUTY** it is to investigate and **to hunt for grounds of doubt**, why should the Court infer that it did not equally deceive the Wright-Blodgett Company, Limited, upon whom no such duty was imposed? This record gives no satisfactory answer to this inquiry. On the contrary, it appears that there was nothing in the way in which the Wright-

Blodgett Company, Limited, went about making its purchase, and nothing in the way in which Samuel S. Aiken, Jr., the tnyman, went about making and commuting his entry, which could or should, under normal circumstances, have placed the Wright-Blodgett Company Limited, upon notice of any alleged fraud in the entryman, Samuel S. Aiken, Jr., and there is no proof in this record that this purchase was made other than in the normal manner.

But we are told by the bill that the Wright-Blodgett Co., Ltd., had this knowledge through J. M. Boyd and Nat Wasey. Let us get the dates in mind and then examine into the correctness of this assertion. The Wright-Blodgett Company, Limited, acquired this land (Rec., p. 25) on Sept. 28, 1901. The record affirmatively shows that at that time J. M. Boyd was not, and had never been in the employ of the defendant. We base this statement upon the testimony of the Government's witness, Foster. He swears, at page 108, that he was employed by the Wright-Blodgett Company, Limited, in the fall of 1901. On pages 113 and 122 he swore that for several years prior to that time he had an office in Lake Charles, Louisiana, in the immediate neighborhood of the office of the Wright-Blodgett Company, Limited, and that he knew the persons in charge of the latter's office. On page 117 he swore:

Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?

A. He was never in the employ of the company, while I was with them, and I don't believe before I was with them.



J. M. Boyd may, therefore, be eliminated from the discussion. He was not an agent of the Wright-Blodgett Company, Limited, but was an agent of the United States an United States Commissioner. No knowledge of any alleged frauds in the entryman can be held to have been acquired by the Wright-Blodgett Company, Limited, through him.

As to Nat Wasey, the record shows that at the time of the trial of this case he was dead. (Rec., p. 62.)

In order that the matter may be clearly before the Court, we refer the Court to the entire testimony of the entryman, at Record p. 181 to 195, calling the Court's attention to the fact that the entryman was placed upon the stand by the United States Government and that it is, therefore, bound and precluded by his statements.

The salient points of the testimony of Aiken, insofar as the Wright-Blodgett Company, Limited, are concerned, are the following statements, which we quote for emphasis. These statements are not entirely in accord with other statements made by Aiken, a fact which the Government called to Aiken's attention on page 193. Aiken replied that in giving the other statements, he had misunderstood the question.

(P. 188):

Q. And on the place on which you did make an entry you erected a log house?

A. Yes, sir.

Q. You furnished that house with a cot to sleep on, and cooking utensils, plow tools, and

what else did you have in there—a place to wash up?

A. Yes, sir; had a basin.

Q. Have any chair?

A. I had a bench.

Q. The house had a brick chimney?

A. No, sir; a dirt chimney.

Q. The whole house had the appearance of being inhabited?

A. I suppose so.

Q. You kept it in good order?

A. As well as a man can.

Q. You got your place cleared up?

A. Yes, sir.

Q. You planted a crop and raised a crop?

A. Yes, sir.

Q. The only time that you knew Nat Wasey was a few days before you met him at the post-office?

A. Yes, sir; personally.

Q. You had heard of him before that?

A. Yes, sir.

Q. You took him over there and showed him the improvements?

A. Yes, sir; we went together, I and Wasey.

. . . . .

Q. You thought at the time that you made your final proof, Mr. Aiken, that you were complying fully with the law?

A. Yes, sir.

Q. You were in absolute good faith as far as you knew in proving up your homestead?

A. Yes, sir.

Q. You had no reason to believe that you had not done everything that the law required?

A. That was my honest opinion.

Q. **YOU TOLD NAT WASEY THAT YOU HAD DONE EVERYTHING THAT THE LAW REQUIRED?**

A. **THAT IS THE WAY THE TRADE WAS MADE.**

Q. **ON THE GROUND THAT YOU HAD DONE EVERYTHING THAT THE LAW REQUIRED?**

A. **YES, SIR.**

Q. **HE WAS ASSURED OF THAT FACT?**

A. **YES, SIR.**

(P. 194):

Q. When you and Wasey were going over the land, talking over the homestead, talking over the purchase of it, he asked you where you lived during the life of the homestead?

A. No, sir; he asked me where was my post-office.

Q. Did he ask you how long you had been living there?

A. No, sir.

Q. Did he ask you whether or not you had lived on the homestead at all?

A. No, sir; not with my family.

Q. Did he ask you whether you lived on it at all without your family?

A. **HE ASKED IF I HAD EVER DONE ANY-THING THERE AND I TOLD HIM I PUT A HOUSE AND HAD A FIELD THERE AND SHOWED IT TO HIM.**

Q. What did you tell him?

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A. I told him that I had built a house and had a field there.

Q. Did you tell him how long you had lived there?

A. No, sir; he did not ask me.

Q. Then, all you told him was that you built the house?

A. Yes, sir. Built the house. It has been so long it is pretty hard to remember those things.

Q. But you tell me one thing and tell Mr. Monroe another; I want to know the facts. Did you make any statement to Mr. Wasey as to whether or not you had lived on that land at all, to the best of your knowledge?

A. **I TOLD HIM THAT I HAD BEEN THERE AND WORKED THERE MYSELF, AS WELL AS I REMEMBER.**

As we observed above, Wasey was dead when this case was tried, and so necessarily he could not testify. But from Aikens own testimony (and Aiken is a Government witness) it appears that Aiken took Wasey to the land, pointed out to him the improvements, consisting of a house, a acre and a half under cultivation, the house furniture, consisting of washing and cooking utensils, the chimney, the plow tools and the sleeping cot, and told him, nay, **assured him**, that he, Aiken, had done everything which the law required of him in the making and commuting of the homestead entry. To put it in Aiken's words the trade was made on the theory that he, Aiken, had done everything which the law required of him.

This evidence is adduced by the Government as proof of the fact that Wasey knew at the time the land was

purchased that Aiken, Jr., had not complied with the law. With all due respect to the gentlemen who successively have propounded this theory to the Court, it seems to us that this evidence proves just the reverse. If we are to believe Aiken, it proves that Wasey was assured by him that he had complied fully with the law, and it proves that in substantiation of the statement so made by Aiken, Wasey was shown the mute evidence in the form of the house, with its surrounding acre and a half of plowed land, its washing and cooking utensils, its plow tools, etc. As far as we are able to see, there was no reason why Wasey should have doubted the statement of Aiken, Jr., corroborated, as it was, by this evidence, and further corroborated by the fact that the Government itself had accepted Aiken Jr's., proofs and issued to him his final receipt. There was no charge laid upon Wasey to hunt for grounds of doubt; there was a charge laid upon the Government to hunt for just those grounds. The facts which Aiken, Jr., narrated to Wasey were fully substantiated by the mute evidence and strongly corroborated by the final receipt, particularly the latter, since the issuance of the final receipt proclaimed to the world the fact that the United States Government had investigated the homestead entry of Aiken, Jr., and after investigation had received his final proofs and issued to him his final receipt. For this reason we submit that the Government has not only failed to show that the Wright-Blodgett Company, Limited, at the time of its purchase had any notice of any failure on Aiken's part to comply with the law, but it has affirmatively shown that the Wright-Blodgett Company, Limited, actually had tangible evi-

dence in its hands, upon which it was entitled to rely, of the fact that Aiken, Jr., had complied fully and completely with the law.

This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been emphatic and its decisions have been uniform. Some of the language used is as follows:

**121 U. S. 381, Maxwell Land Grant Case:**

“We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully

sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

**123 U. S., 307, Colorado Coal & Iron Co. v. United**

**States:**

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained,

from the Land Office, or the officers who had witnessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the Government to produce so much of this further evidence as could be obtained, and that, in its absence, the United States had not made all the proof of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

**133 U. S., 193, U. S. v. Hancock:**

The syllabus reads:

"Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for \$1500.00, though it may be the subject of criticism, is not the clear, convincing and unambiguous proof of fraud which is required to set aside a patent of public land."



197 U. S., 200, **United States v. Stinson:**

The syllabus reads:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a **bona fide** purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties."

A reading of this record will, we submit, convince this Court that there is no such clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright-Blodgett Company, Limited, but on the contrary, will show that that company purchased **upon the assurance** of the entryman that he had complied with the law, which assurance was corroborated by the mute evidence furnished by the house, the ploughed field, etc., and contradicted by nothing whatever.

For these reasons we submit that the judgment of the Court of Appeals is erroneous and should be reversed and a decree entered dismissing the bill.

J. BLANC MONROE,

MONTE M. LEMANN,

A. R. MITCHELL,

Solicitors for Defendants.

January, 1915.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1914.

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| WRIGHT-BLODGETT COMPANY, LTD., AP-<br>pellant,<br>v.<br>THE UNITED STATES. | } No. 151. |
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*APPEALS FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT.*

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**BRIEF FOR THE UNITED STATES.**

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## STATEMENT.

In these five cases separate bills were brought  
by the Government in the Circuit Court for the

Western District of Louisiana against the appellant corporation and one other defendant, in each case to cancel land patents which had been issued under the homestead laws to the individuals named as defendants. While there is a separate record in each case, the questions involved are similar, where they are not identical, and we shall therefore, for convenience, and to save the time of the court, present and discuss all five cases in one brief. The following facts appear from the bills and the entry papers:

In No. 151 the entry involved was made October 19, 1898, by *Joe J. Hicks* for 161.24 acres of land in the Natchitoches land district, Louisiana. (R., 33.) In the commutation proof, offered June 11, 1901, under the provisions of section 2301, R. S., the entryman and his two witnesses testified that he settled upon the land in February, 1899, and built a house and established residence in March of that year; that he and his family had not been absent from the land more than four months at any time, had cultivated two acres, raising two crops thereon, had erected a dwelling house, with a chimney and gallery, and planted fruit trees, the total value of the improvements being \$100 (R., 40-44). This proof was taken before James M. Boyd, a United States commissioner, and upon its being filed in the local land office the register issued final certificate thereon July 6, 1901. (R., 48.) Patent was subsequently issued April 1, 1902. (R., 49.) In the

meantime, on July 10, 1901, four days after the issue of the final certificate the entryman sold the land to the appellant. (R., 29.)

In No. 152 the entry involved was made by *Walter O. Allen* April 10, 1899, for a quarter section of land adjoining that of Hicks. (R., 27.) Commutation proof was offered June 11, 1901, before Boyd, in which the entryman and his two witnesses testified that settlement was made upon the land in April, 1899, and actual residence established at the same time; that the entryman and his family had resided continuously on the homestead since establishing residence thereon, not having been absent at all; that two crops had been raised on two acres, the improvements made on the land consisting of a dwelling house, with a chimney, gallery, a crib, and stables and fruit trees, valued at \$100. (R., 35-39.) Upon this proof the register issued final certificate July 8, 1901. (R., 4.) The patent was issued July 5, 1902. (R., 23.) Prior to the issue of patent on July 10, 1901, only two days after date of the final certificate, the entryman conveyed the land to the appellant. (R., 56.)

In No. 154 the entry was made January 13, 1900, by *Elijah Z. Boyd* for 80 acres in the same township. (R., 32.) Commutation proof was made before Boyd May 18, 1901. In this proof the entryman and his two witnesses testified that he settled and established actual residence January 14, 1900; that he had not been absent at all; that

he had raised a crop on two acres; that the improvements consisted of a house 12 x 14, with fruit trees, all valued at \$75. (R., 37-43.) Final certificate was issued May 24, 1901 (R., 45), and the patent February 15, 1902 (R., 26). In the meantime, on June 21, 1901, one month after the issue of final certificate, the entryman conveyed the land to the appellant. (R., 54.)

In No. 155 the entry involved was made by *Samuel S. Akin, jr.*, May 4, 1899, for 163.42 acres in the same township (R., 31), and commutation proof was offered before the same United States commissioner August 17, 1901. In this proof the entryman and his two witnesses testified that he settled and established actual residence May 4, 1899; that he and his family had resided there continuously, not having been absent at all; that the improvements consisted of a log house 16 by 18, with side room and stables and orchard, all valued at \$75; and that two crops had been raised on two acres. (R., 36-41.) Final certificate was issued September 18, 1901 (R., 44), and patent April 1, 1902 (R., 23). In the meantime, on September 28, 1901, 10 days after the issue of the final certificate, the entryman conveyed the land to the appellant. (R., 59.)

In No. 156 the entry involved was made by *Samuel E. Bryers* January 31, 1900, for 75.65 acres, in the adjoining township. (R., 39.) Commutation proof was made before Boyd August 17, 1901, the entryman and his two witnesses testify-



ing that he settled and established actual residence February 1, 1900; that he and his family had resided there continuously, not having been absent at all; that the improvements consisted of a lumber house, 12 by 12, with a crib and orchard, valued at \$80, and that two crops had been raised on two acres. (R., 46-51.) Upon this proof the register issued final certificate September 18, 1901 (R., 54), and the entry was patented April 1, 1902 (R., 23). In the meantime, on September 28, 1901, 10 days after the issue of the final certificate, the entryman conveyed the land to the appellant. (R., 31.)

The bills charged that the final proof made by the respective entrymen was false and fraudulent in that they had not established actual residence upon their lands as alleged in their proofs, or at any time at all; that they had not resided on their lands continuously, or in any other manner; had not cleared the quantity of land said to have been cleared; had not cultivated the same as alleged; and that when it purchased the respective tracts from the entrymen the appellant company then and prior thereto had notice through its agents, James M. Boyd and Nat Wasey, and was well advised of each and every detail of the false and fraudulent methods adopted by the entrymen in procuring the issuance of the patents; and that the appellant thus knowing and being advised of the fraudulent acts and doings of the entrymen did, through its officers, whose names were unknown to

the plaintiff, aid, assist, advise, and encourage the commission of each and every one of said acts and things with the fraudulent purpose of obtaining title to the lands in the manner described (pp. 7-10 of each record).

In each of the cases the appellant filed an answer in which it admitted the making of the entries as set forth in the respective bills of complaint and its purchase of the land from the entrymen, but disclaimed all knowledge of any fraud or misrepresentations in the proofs offered by the entrymen and claimed that in purchasing the lands it had relied upon the good faith of the entrymen and the integrity of their proofs. It especially denied that Nat Wasey or James M. Boyd, the persons mentioned in the bills of complaint as appellant's agents, had been or were its agents intrusted with investigation and solicitation for the purchase of lands, and denied that through them *or otherwise* it knew of the alleged fraudulent acts and statements set forth in the bills of complaint, and that through its officers or otherwise it aided, assisted, or encouraged the commission of any of the alleged fraudulent acts. The answers are substantially the same in each case and will be found in No. 151 at pages 15-16; No. 152, pages 15-16; No. 154, pages 19-20; No. 155, pages 15-17; No. 156, pages 15-17. In only one case did the defendant entryman file an answer. That was done in No. 154, where the entryman, Boyd, filed an answer denying all the

allegations of the bill charging fraud and misrepresentation. (R., 16-18.) In each of the other cases the defendant entrymen either affirmatively consented that decrees might be entered against them or took no action and decrees were entered through default.

The testimony in all of the cases was taken at or about the same time. Indeed, much of the testimony in one case was by stipulation made to apply to the other cases. This was particularly true of the testimony intended to show that the appellant had notice of the alleged frauds by which the title was acquired.

The Circuit Court having gone out of existence when the cases came on for hearing, they were decided by the District Court and a decree was entered in each case granting the prayer of the bill, there being no written opinion. (R., 151, p. 22; R., 152, pp. 21-22; R., 154, pp. 24-25; R., 155, p. 22; R., 156, p. 22.) Separate appeals were taken by Wright-Blodgett Company to the Circuit Court of Appeals where the action of the District Court was affirmed, all of the cases being embraced in the following brief opinion:

The above entitled and numbered cases are separate appeals from separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that Wright-Blodgett & Company, vendees of the

alleged homesteaders, are charged through their active agents on the ground with knowledge of the fraud.

The decree in each of the above mentioned cases is affirmed. (R., 151, pp. 176-177.)

Petition for rehearing was denied by the Circuit Court of Appeals March 18, 1913 (R., 151, p. 182), whereupon the appellant sued out appeals to this court.

#### ARGUMENT.

##### I.

The two lower courts having concurred in finding that the testimony respecting cultivation, residence, and improvements was false, and that the appellant had notice through its agents on the ground at the time of its purchase, the finding should not be disturbed unless clearly erroneous.

We shall not take the time of the court to elaborate this point, as the rule is well settled. (*Texas & Pacific Ry. Co. v. Railroad Commission of Louisiana*, 232 U. S., 338; *Gilson v. United States*, 234 U. S., 380.)

##### II.

**There is evidence to support the findings.**

While the evidence in regard to residence, cultivation, and improvements by the respective entrymen is necessarily different in each case and must therefore be separately considered, before doing that we shall refer to that portion of the evidence

which was offered to show that the appellant's agents, through whom the various tracts of land were purchased, were fully advised of the manner by which title had been acquired from the Government.

The testimony of the several witnesses mentioned in this connection is applicable to all five cases and forms a part of each of the separate records, but for convenience reference will be made here only to the record in case No. 151, involving the entry made by Joe J. Hicks.

The appellant's Louisiana office was located at Lake Charles, in charge of one Michael Kelly. (R., 111.)

Ben M. Foster, a witness for the plaintiff, testified that in the fall of 1901 he entered the employ of Wright-Blodgett Co., serving under Mr. Kelly (R., 90); that prior to that time the company had employed Thomas E. (B.) Dickens (R., 104), and that when witness went to work for Wright-Blodgett Co. Nat Wasey was in the latter's employ, serving as a "woodman." When asked what he meant by a "woodman," he answered: "Well, he was employed to inspect timber for the company and make reports on it." (R., 91.) These reports by Wasey were made for the purpose of buying. (R., 92.) He states that in cases where there was a patent or receiver's receipt for the land the company would buy merely upon Wasey's report. (R., 93.)

34. Without any further investigation?

Yes, sir.

35. Was Mr. Wasey located in Lake Charles, or did he live in the country where he bought timber?

He lived in the woods.

36. Was it part of his business to live in the woods and go around where the land was?

He could find out thing(s) at less expense by living in the woods.

37. Where did he spend his time?

In the woods. (R., 93.)

This witness further testified that Wasey had been in the company's employ possibly three years before witness entered it (R., 93); that Kelly had been managing the company's business since as early as 1898 (R., 95); that Kelly frequently went with Wasey into the woods to verify the latter's estimates, and things of that kind; that witness made one or two trips with Kelly, maybe several, and was present on occasions when Wasey paid for the land (R., 96); that money was sent to Wasey for the purpose of buying land; more than \$2,000 was sent him at times (R., 103); that he was the one who generally paid for lands (R., 94); and "usually he got enough money to pay for the lands he had written in about. If several sales had been made, he might have gotten as much as \$5,000 at one time; but if only one sale, it would have been correspondingly less" (R., 103).

That Wasey inspected all of the lands purchased by the company is apparent from the following testimony of this witness, which completely disposes of counsels' claim that the appellant in making purchases relied upon the general cruise which it had procured from Lacey & Co.:

38. Mr. Monroe has called your attention to the fact that a cruise or report had been made on lands in this territory about 1898. In cases where lands were bought upon the recommendation and report of Mr. Wasey what would govern the action of the company, the report of Mr. Wasey or the record of the cruise?

As a general thing there would not be much difference between the reports, but if there should be Mr. Wasey was sent back to see if an error had been made.

39. If he stated that no error had been made in the report, what action would be taken?

His report would be accepted. (R., 104.)

Upon cross-examination this witness was asked:

1. As I understand, Nat Wasey would go through the country and get price on various lands, would bring them back and submit them to the Lake Charles office of Wright-Blodgett Co.; the Wright-Blodgett Co. would then have the titles passed upon, and if the prices were all right and the titles correct would instruct Mr. Wasey to purchase and would give him money to complete the purchase with. Is that correct?

A. That is correct. (R., 105.)

James M. Heard, another witness for the plaintiff, testified that Wasey was buying timber and accepting deeds for the Wright-Blodgett Company in the years 1899, 1900, and 1901.

Q. Do you know that of your own personal knowledge?

A. I do. (R., 66.)

Witness W. A. Winfree, who was employed in the sheriff's office in Leesville in 1898 and was deputy clerk for several years from June, 1900 (R., 73), stated that Nat Wasey was in the clerk's office frequently, once a week or once a month. (R., 75.)

Q. What would his business be?

A. Filing papers for record.

Q. What kind of papers?

A. Kind of certificates and deeds, sometimes he would file them and sometimes he would make affidavit and send it to the Wright-Blodgett people at Lake Charles, and they would return it for recordation. (R., 76.)

Thomas E. Wingate, whose home was in Leesville, also bought lands for the appellant. (R., 154.) He knew that Wasey was agent for the company, because he assisted him in transactions, sales, etc., and would see him buy and pay for lands for the company. (R., 157.) He also knew that Dickens was employed by Wright-Blodgett Company.

30. How do you know that?

A. From correspondence and conversations had with him and business transac-



tions with him. Mr. Dickens was Mr. Kelly's, I would term it, private secretary. He was stationed at Lake Charles in the office; kept his books, made his maps, looked after his correspondence. If Mr. Dickens cruised timber or went into the woods and purchased and purchased land, I know absolutely nothing about it. (R., 157.)

In the absence of Kelly, Mr. Dickens was in charge of the office. Pujo & Moss were their counsel, and Mr. Dickens would confer with them. (R., 158.) Kelly frequently visited Leesville personally and so would Dickens. Wasey was employed to look after the land of the Wright-Blodgett Co. and to purchase timber. He was the company's field man. (R., 159.) This was made even clearer on cross-examination. (R., 160-161.)

C. D. Moss, the only witness called by the appellant, and whose law firm was employed by Kelly to examine the company's abstracts of title, further testified that Dickens was in the company's office prior to the time that witness Foster entered its service, and that Nat Wasey did some work for the company in the field. (R., 112, 113.)

The foregoing clearly shows that the appellant, a Michigan corporation, was engaged in purchasing timber lands in Louisiana from 1898, or soon after, until after 1902, through its agents, Michael Kelly and his assistants, Dickens, who was employed in the office, Foster, who followed Dickens, and Nat Wasey, who was the company's woods-

man employed to inspect all land offered for purchase. We shall now, therefore, examine the evidence relating to the manner in which title was acquired to each of the several tracts involved and the circumstances under which those tracts were purchased by the appellant.

CASE NO. 151, HICKS' ENTRY.

This entry was made October 19, 1898 (R., 33), following the summer during which Hicks moved to the town of Leesville (R., 130). He maintained a home in the town, which was some 20 miles from his homestead (R., 128), and lived there with his family continuously (R., 58, 59, 123). He was elected county clerk in April, 1900. (R., 67.) Hicks himself testified that during the lifetime of the entry he would visit it "once about every four months," when he would "spend the night." R., 123.) Walter O. Allen, Hicks' brother-in-law, who entered the tract adjoining and was supposed to guard the Hicks land, testified that the only crop planted was peas, which "never matured to make enough for the seed that was put in the ground," and was not cultivated or attended to "to amount to anything." (R., 137.)

There is no question whatever that Hicks wholly failed to comply with the requirements of the statute respecting residence and cultivation, and, indeed, no attempt was made by the appellant to

refute the showing made by the Government in this connection.

It is equally clear from the evidence that the appellant's agents, Thomas B. Dickens, who negotiated the purchase of the land, and Nat Wasey, its inspector, knew that Hicks had not complied with the requirements of the homestead law. This is best shown by the entryman's testimony. (R., 124 et seq.)

39. In making this commutation of your entry was it necessary to pay any sums of money to the Government?

A. Yes, sir.

40. How much?

A. Right around \$400 for each entry.

41. Where did you get the money?

A. Mr. Dickens, who was in the employ at that time of the Wright-Blodgett Co., visited Leesville frequently, and a short time before the fourteen months' period had expired he asked me something about the homestead, and I told him, "Yes; I have a homestead," and he asked me then \* \* \* what I was going to do with the land. I told him I guess I would sell it after I made my proof. The question then came up as to the commutation money, and Mr. Dickens remarked, "I will loan you the money." I told him "all right," and after I had received my final receipt Mr. Dickens came to Leesville and made me an offer on the land, which I accepted.

42. In compliance with his promise of Mr. Dickens, did he ever loan you or advance you any money?

A. Yes, sir.

43. State the circumstances, amounts, etc.

A. Well, three or four days, as well as I remember, before the day for making the proof I wrote Mr. Dickens that I would need about \$200. He sent me check for that amount. Upon forwarding the proof, together with that amount of money, to the land office at Natchitoches I was advised by the officials that the land was situated out of the \$1.25 limit, and that I would be required to pay \$2.50 per acre, and to the best of my recollection I mailed Mr. Dickens the letter that I had received from the land office and he mailed me check to cover the balance.

44. Where did you address Mr. Dickens? \* \* \*

A. Lake Charles.

45. Do you know for whom Mr. Dickens worked at that time?

A. I know from hearsay.

46. From his own statement?

A. I only know by this: I was clerk of court and Mr. Dickens visited my office frequently, looking after matters pertaining to deeds conveying lands to Wright-Blodgett Company.

47. Did Mr. Dickens state to you whether or not he was furnishing you this money for commutation of land personally or for some one else?

A. I do not know.

48. After the commutation of this land did you receive any final receipt or receiver's receipt?

A. Yes, sir.

49. Did you ever make a sale of this land?

A. Yes, sir.

50. To whom?

A. Wright-Blodgett Co.

51. Examine this and see if it, to the best of your knowledge and belief, (is) a correct copy of the act of transfer?

A. I could not say. I believe it was on a printed form.

52. Is this a correct copy?

A. Yes, sir; I am sure—in fact, I know—it is the deed of 1901.

53. You sold the land to Wright-Blodgett Company?

A. Yes, sir.

54. Who represented Wright-Blodgett Co. in the making of this sale?

A. Mr. Dickens.

55. This deed recites that it is made for a consideration of \$800. Was that amount paid you for the land?

A. Yes, sir.

56. Was it paid in cash?

A. Yes, sir.

57. State whether or not it is a fact that upon the making of this sale you were paid \$800 in cash, or \$800 less the amount already advanced you for commutation?

A. I was paid the amount less the checks sent me before.

58. Then the money advanced you by Dickens for commutation of this land was applied when the land was sold Wright-Blodgett Co. as part of the purchase price?

A. I believe it was.

59. Don't you know?

A. Yes; I know it was by their deduction.

60. Did Mr. Dickens at any time before the commutation or after, or before the sale or after, make any inquiries of you as to what extent you had complied with homestead laws regarding this land?

A. No, sir.

61. How often did Mr. Dickens come to Leesville?

A. He was there quite frequently. I don't remember. Sometimes 60 or 90 days; at other times once a month.

62. You were living openly with your family at Leesville?

A. Yes, sir.

63. Was Mr. Dickens ever at your home?

A. Yes, sir.

64. Do you know from statements made by him whether or not he was aware that you were living at Leesville?

A. He must have known.

65. You were clerk of court at the time?

A. I was.

66. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see if it was probably settled, or lived upon, or the homestead laws were complied with?

A. I do not know.

67. Do you know Nat Wazey?

A. Yes, sir; I did know him.

68. How long had you known Wasey at the time you commuted this land.

A. I think I met Mr. Wazey before I was elected clerk of court; about the time I began work for Mr. Winfree in 1899.

69. Did you ever have any talks with Mr. Wazey regarding this land?

A. No, sir.

70. What was Mr. Wazey's occupation?

A. I didn't know; I heard afterwards. Everybody seemed to know he was buying land for Wright-Blodgett Co. \* \* \*

71. Do you know where Nat Wazey lived?

A. No, sir. I can not say that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Wazey's activity and occupation for the Wright-Blodgett Co. was?

A. Well, principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory, I think; that is, where he bought the principal part of land.

74. Mr. Hicks, during the life of your entry, before the sale of the land to Wright-Blodgett Co., was, or not, Nat Wazey frequently in the clerk's office at Leesville?

A. Up to that time, not very often.

75. Was he there occasionally?

A. Yes, sir.

76. Was Wazey ever at your house?

A. No, sir.

77. Do you know from his acts or words that he was aware of your living there?

A. I do not.

78. Do you know whether he was aware that you were clerk of court at Leesville at the time he would file deeds and papers with you?

A. Yes, sir.

79. How far was this homestead of yours from Leesville?

A. In the neighborhood of 20 miles. About 20 or 25 miles.

80. Any railroad connecting the places?

A. No, sir.

81. Any trolley lines of any kind?

A. No, sir.

82. How long would it take you to make a trip from your homestead to Leesville?

A. About five hours.

83. By what method of travel?

A. Buggy.

#### CASE No. 152, ALLEN'S ENTRY.

Allen's entry was made April 10, 1898 (R., 27), and proof was made June 11, 1901 (R., 35), final certificate issuing July 8, 1901 (R., 44). Allen was a brother-in-law of Hicks, the entryman in case 151 and their two entries adjoined. (R., 116.) A combination house was built for Hicks and Allen. Peas were planted that did not mature. The house had openings for windows but no glass.



The entryman testified that he lived in Leesville at the time he made the entry and never took up actual residence on the land. He would visit his entry at intervals of four, five, or six months, staying overnight, and that was the extent of his residence. (R., 117.) When asked if he had completed his entry in any way, he answered: "I never did myself, but it was obtained. I never made application. It was all done through Mr. Hicks." (R., 117.) He further testified that it required \$2.50 per acre to commute the entry, which embraced 160 acres, and when asked whether he had furnished the money himself, he said: "I had no funds. I had no money to pay it." (R., 118.)

46. You obtained this money from some other source?

A. Yes, sir.

47. From whom?

A. I never received a dollar from anybody.

48. This money was paid before (for) you by some one else?

A. It was.

49. By whom?

A. Mr. King furnished the money. (R., 119.)

(This witness when recalled stated that by King he meant Dickens, R., 124.)

50. Who was Mr. King?

A. Supposed to be representing the Wright-Blodgett Company.

51. What is your reason for believing that he represented the Wright-Blodgett Company?

A. He was the man that offered to buy, representing himself as representing the firm. He said he was.

52. Upon this commutation, or after this commutation, did you receive a final receipt—register or receiver's receipt?

A. Yes, sir; I did.

53. Do you still own these lands?

A. I do not.

54. When did you part with them?

A. Within 30 days after I received the receipt.

55. How did you part with them?

A. A consideration of about \$800.

56. You sold them?

A. Yes, sir.

57. Who to?

A. To Wright-Blodgett Company.

58. Was it cash or credit act?

A. Cash.

\* \* \* \* \*

64. Who was it carried on the negotiations for the sale, made the offer, and paid the money?

A. It was all done through Mr. J. J. Hicks. (R., 119-120.)

Upon cross-examination this witness testified:

6. What furniture did you have in the house?

A. I don't know that I had any. Chair and bench.

7. When you stayed over night and when your wife and daughter stayed over night, as you testified they did, where did they sleep?

A. We fetched bedclothes with us in a wagon and used them while we were there and took them back.

8. Leave any bedstead in there at all?

A. No, sir.

9. Any cots?

A. No, sir; never had one there.

10. Was there a bunk built in the house?

A. There might have been something like that. I believe there was something of that kind.

11. Don't you remember a bunk there, Mr. Allen?

A. No; I couldn't tell whether there was or not.

12. Your impression, as you sit there, is that there was?

A. A very faint one. (R., 121.)

Joe J. Hicks, the entryman in case 151, when called as a witness in this case, testified that during the lifetime of the entry Allen lived in the country some three miles from the homestead (R., 128); that he assisted Allen in commuting the entry, having raised the necessary money. When asked to state the circumstances and where the money came from he answered:

It came through the same channel as mine did. It all came together. About the time the fourteen months had expired Mr. Dickens

of Lake Charles inquired of me if myself and Mr. Allen *intended to sell our land* after making proof, and I told him that we did. I told him that Mr. Allen was not financially able to raise the money with which to commute his, and that I needed some money myself, and he said, "I will loan you the money," and afterwards, three or four days before the commutation, or the day before taking the proof, Mr. Dickens sent me check for about \$400, intending it to cover each entry, I suppose. After making the proof and sending it, together with about \$200 in each case, we were notified by the land office at Natchitoches that the land was within the double minimum, which was \$2.50 per acre. This letter I forwarded to Mr. Dickens at Lake Charles, and he sent me check covering the remainder. I don't remember exactly the amount.

37. Do you remember how this check sent you by Dickens was signed?

A. Signed by Dickens himself, personally.

39. Do you remember who it was on?

A. It was on the Calcasieu bank; I believe it was the Calcasieu National Bank.

40. When did you first meet Mr. Dickens? What were his initials?

A. Thos. B., since I have refreshed my memory. I never knew him until after June, 1900, after I was elected clerk of court.

41. What was the occasion of your meeting him?

A. He came to my office to file deeds, looking after matters of record and pertaining to lands owned by the Wright-Blodgett Co.

42. Do you know by whom the deeds and papers filed by him were paid for?

A. I do not know.

43. Can you give any information as to who paid these bills?

A. They were paid by Wright-Blodgett Co.

44. Did Mr. Dickens ever state to you by whom he was employed and in what capacity?

A. I don't know that he did.

45. Do you know whether or not he made negotiations for the purchase of lands by the Wright-Blodgett Co.?

A. I don't know anything further than in mine and Mr. Allen's case.

46. The deeds in those cases were made out to Wright-Blodgett Co.?

A. Yes, sir.

47. They were recorded in Leesville?

A. Yes, sir.

48. Do you know who paid the bills for recording these deeds?

A. Paid by Wright-Blodgett Co.

49. After Mr. Allen had made this commutation did he make any disposition of this land that you know of?

A. Yes, sir.

50. What?

A. He sold it to Wright-Blodgett Co.

51. How long after the commutation did he make this sale?

A. I don't remember. Not long; 30 or 40 days.

52. Who represented Wright-Blodgett Co. in this sale?

A. Dickens.

53. When Mr. Dickens agreed to advance the money for his commutation was any understanding entered into as to what disposition would be made of the lands after proof was made?

A. No, sir.

54. No understanding that they would be sold or not?

A. He had asked me the question before as whether or not we intended selling our land and I told him we were.

55. Was there any understanding or agreement between you and Dickens or the Wright-Blodgett Co. that after this commutation and issuance of final receipt that the land would be sold to the Wright-Blodgett Co.?

A. No, sir; there was not.

56. When this land of Mr. Allen's was sold to Wright-Blodgett Company who paid for it?

A. Wright-Blodgett Company.

57. Through whom?

A. Mr. Dickens. As well as I remember the check was sent to me covering the entire purchase for both tracts, and Mr. Allen had gotten money all along from me to live on, and so after I deducted the amount he was

indebted to me. I gave him my personal check for the difference. I don't remember how much it was.

58. Do you remember in this transaction whether or not the amount advanced by Mr. Dickens for this commutation was subtracted from the purchase price?

A. Yes, sir.

59. It was?

A. Yes, sir.

50. (60) In settling for these lands the Wright-Blodgett Company paid the consideration recited in the deed less the amounts advanced by Dickens for this commutation in both instances?

A. Yes, sir.

51. (61) In your case and his?

A. Yes, sir.

#### CASE NO. 154, BOYD'S ENTRY.

This entry was made January 13, 1900 (R., 32); commutation proof was offered May 18, 1901 (R., 37-43), and final certificate was issued May 24, 1901 (R., 45).

Witness Micheal Smith, who lived about 300 yards from the land, and knew the entryman "since he was a little boy" (R., 60), testified that Boyd lived at Cora, some  $3\frac{1}{2}$  miles from the land, and that he had never seen Boyd living on the land; that the improvements made on the homestead consisted of a small house and something like an acre fenced. The house was built *after* July, 1900. (R., 61.) There was no furniture in the

house; there were holes for windows, and no facilities for cooking. (R., 64.)

Witness J. D. Wilson, who had known Boyd since the latter was small (R., 74), testified that the only thing that he ever saw in the house was plows; that there was a little fence around an acre of land; he never saw anyone living at the place; that he visited it as frequently as once a month (R., 76), and he never saw any part of the land cultivated and had never seen any crop raised (R., 77).

The entryman himself, though he filed an answer denying the allegations of the bill, when called as a witness for the Government, testified that the house cost him about \$20 or \$25; that he had fenced something over an acre; that he visited the land once every three months and made a practice of staying about three days; that he kept cots for sleeping purposes; sometimes he left them there (R. 169); that his actual residence during the life of the entry was at his father's, about 3 miles from his homestead entry. The entryman testified that he sold the land to Nat Wasey, who "was supposed to be representing Wright-Blodgett Company"; that is, he supposed he sold to Wasey, and, when asked who was it that acted as agent for the company, he answered "Mr. Wasey," who lived about 12 miles from his place (R., 170).

Witness Smith testified that Wasey was in that neighborhood during the lifetime of the entry;



that that was about the time that he was there principally. (R., 62.) Witness Wilson also testified that Nat Wasey was in the neighborhood; he seemed to be in the land business. (R., 78.)

CASE NO. 155, AKIN'S ENTRY.

This entry was made May 4, 1899. (R., 28.) It embraced a quarter section of land in the same township as that mentioned above; that is, T. 2 N., R. 5 W., in Vernon Parish. Commutation proof was offered August 17, 1901 (R., 36-42), and final certificate was issued September 18 following (R., 44).

Witness A. A. Carruth testified that during the years 1899 to 1901 he lived about 2 miles from the land and had occasion to cross it frequently, sometimes every week, and during that time nobody ever lived there. The improvements consisted of a little log house, which was not furnished. (R., 79.) It had no stove, no cooking utensils. It had been built by a man named Burns. About half an acre had been cultivated and planted in peas *during the first year* of the entry, which, so far as witness knew, were never harvested. (R., 80.)

The entryman himself, when called as a witness for the Government, said that at the time he made the entry he was living at Lloyd, in Rapides Parish, about 35 miles from the homestead; that he was married at that time and had two children, who were living with him at Lloyd, and

that after making his entry he did not change his place of residence, but continued to live at Lloyd with his family (R., 183); that he would visit the place three or four times a year and would stay a day, sometimes two days. Improvements consisted of a house and field, a little log house of one room, no windows; that the furniture consisted of plow, tools, saw and hammer, and some cooking utensils; no household goods except a cot. (R., 184.) This witness testified further that he sold the land to one who claimed to be the agent of the Wright-Blodgett Company; that the agent who invited and conducted the negotiations of the sale was Mr. Nat Wasey; that he had seen Wasey before and knew about where he lived, 10 or 15 miles from the homestead (R., 186); that Wasey came to him or they met at the post office, where the sale was made, three or four miles from the land; that Wasey and the entryman went over the land together; that Wasey knew where he lived (R., 187). They "went over the whole homestead" (R., 188); Wasey was shown the improvements (R., 189).

Q. Then Mr. Wasey did inquire what you had done in regard to complying with the homestead laws?

A. Yes, sir. (R., 191.) \* \* \* He asked me if I had ever done anything there, and I told him I put a house and had a field there and showed it to him.

Q. What did you tell him?

A. I told him that I had built a house and had a field there.

Q. Did you tell him how long you had lived there?

A. No, sir. He did not ask me. (R., 194.)

This witness also testified as follows:

Q. Then, when he bought this land, from his own inquiries he learned that you were living with your wife and children 35 miles from the homestead?

(Objected to by counsel for defendant on the ground that it calls for the knowledge of Wasey from this witness.)

Q. You told Wasey that when you made the sale?

A. Yes, sir. (R., 191.)

He afterwards qualified or corrected the testimony by explaining that Wasey's question and the answer to it had reference to the witness's post office at the time of the negotiations. The post office, or at least witness's home, which must have been close to it, as we have seen, was 35 miles away. Wasey was a witness to the deed to the appellant executed by the entryman only 10 days after the issuance of the final certificate. (R., 24.) Taking the testimony on the subject as a whole (including that given by the witnesses, Wilson, R., 65; Charles M. Ingalls, R., 67; F. M. Ingalls, R., 64; and that of the entryman and the witness, Carruth, to which we have already referred), there can be little doubt that the so-called improvements constituted the veriest pretense of compliance with

the homestead law. We will not attempt to review the testimony at length, but will invite the attention of the court to it. Knowing the recency of the final proof when the purchase was negotiated, knowing the remoteness of the entryman's home, and observing the ocular proof that the residence and cultivation were a sham, Wasey, the agent of the company, who solicited the purchase and conducted the whole transaction in its behalf, was put upon clear notice of the fraudulent character of the entry. At least it would not do to say that this record affords no evidence to support the finding of the courts below in that regard.

CASE NO. 156, BRYERS' ENTRY.

This entry was made January 31, 1900. (R., 39.) It embraced 75.655 acres in the township adjoining that in which the four other entries were made. Commutation proof was offered August 17, 1901 (R., 46-51), and final certificate was issued September 18, following (R., 54). A deed from the entryman to the appellant was executed September 28, 1901, Nat Wasey being a witness to the instrument. (R., 33.)

Witness F. M. Ingalls, for the Government, testified that during the life of the entry Bryers lived with a Mr. Smith, *some four miles from the land.* (R., 72.)

The entryman himself testified that the improvements consisted of a plank house about 12 feet square and a little crib, with about an acre

and a half of cleared land. The house had no doors or windows. (R., 61.) He was working at Mr. Smith's and living there, and during that time he would go up and "stay on it some. I couldn't stay on it all the time." (R., 64.) Smith's residence was some four miles from the homestead. When asked how the house was furnished, he answered, "Why, I just taken my things up there."

Q. What things did you take?

A. My quilts to sleep on and stay on the land.

Q. What other furniture, if any, was in the house except your quilts?

A. I never had anything else.

Q. What cooking arrangements did you have?

A. None; I carried my grub with me.

Q. How often during the 20 months that you say passed between the time of your entry and the time of your commutation proof did you stay all night on that land?

A. I reckon I made an average of staying on it about one night out of the month. (R., 64-65.)

This witness testified that the money to commute the entry was furnished by Nat Wasey. He did not know how much it was. He said he sold the land to Nat Wasey.

Q. How do you know anything about what was paid for your land; did somebody tell you about it?

A. What was paid?

Q. Yes. You made the proof at two and a half an acre?

A. Yes. Why, I do not know what it was. I didn't know how much. Nobody didn't tell me.

Q. Were you working for Michael Smith at the time?

A. Yes, sir.

Q. You were making money, wasn't you?

A. Yes, sir.

Q. How much money?

A. I do not know now. I believe \$1 a day he was giving me.

Q. And your board?

A. Yes, sir.

Q. Had you saved up any money?

A. No; I had not saved up none. (R., 67-68.)

This witness further testified as follows:

11. Did you have any agreement or understanding with Wazey as to the advancement of this money?

A. To be sure.

12. What was that agreement or understanding?

A. For me to let him have the land.

13. Did you comply with your part of that agreement by selling him the land after commuting it?

A. Yes, sir.

14. Do you know whether the land was sold to him personally or to some company he represented?

A. Must have been to a company.

\* \* \* \* \*

24. Was not Wazey present when you made your proofs?

A. No, sir; I don't believe he was. He was there, but not when I made my proofs.

25. It was before you made proofs that you had this understanding with him?

A. Yes, sir. (R., 160-161.)

On cross-examination this witness was asked:

10. When you get your final receipt you could have sold the land to anybody you wanted?

A. Yes, sir—no, I couldn't, either, 'cause I'd promised to sell it to him. (R., 163.)

\* \* \* \* \*

37. What promises did you make to him?

A. I would let him have the land.

38. When was it you made him that promise?

A. It was the same day I made my proof.

39. Was it before or after your (you) made your proof?

A. It was before I made my proof.

40. How long before?

A. The same day. (R., 165.)

\* \* \* \* \*

56. How do you happen to be so certain that you made this agreement with Wazey the same day you made your commutation proof?

A. Of course I recollect that because I didn't have any money to make my proof

and he furnished me the money. That is how I remember; I didn't have the money.

57. Did he give you any money personally?

A. No, sir.

58. Who made your proof for you?

A. Jim Boyd.

59. How do you know Nat Wazey ever furnished any money?

A. I am not certain, of course. I don't know for certain. I think he did. I did not aim to beat the Government out of anything. I don't want to beat anybody.

60. You don't know for certain that he ever furnished any money or not?

A. Yes; he furnished the money.

61. How do you know?

A. Well, he promised it to me. (R., 166.)

A rather savage attack upon the testimony of this witness is made in the brief of the learned counsel for appellant (pp. 48 et seq.), who draws upon his imagination, or some other source *dehors* the record, in order that the court may derive the more vivid a picture of the witness' supposed terror and unreliability. We do not believe that the truth is helped by the manner in which counsel have treated the subject. We feel that a careful perusal of Bryers' entire testimony will convince that, taken in connection with the failure of the appellant to produce any answering evidence of its own, there was in it quite enough to sustain the decree in this case. The testimony shows conclu-



sively that the witness was an utterly illiterate man (he could not read, or even sign his own name to the deposition), devoid of property or pecuniary means; that his employer furnished him the lumber for his hut; that Boyd, the commissioner, suggested that he commute his entry and that *somebody* must have put up the money to do it with. That *somebody* could have been none other than Wasey, who was present or near when the proof occurred and shortly afterwards paid the entryman his share and witnessed the deed to the appellant. The contradictions to which counsel calls attention are of no special significance when due allowance is made for the evident fact that the witness was flustered (doubtless by the violent objections and fierce demeanor of the learned counsel himself) and, for that reason, and because of his ignorance, did not clearly apprehend some of the questions or express himself exactly in some of his replies.

On page 63 of the record, where he indicates that nothing was said or promised about the money, he clearly refers to the money paid the register, which he did not see or handle (R., 63, 67)—the money which “they” furnished (R., 62). On the second examination he recalls that Wasey promised this before the commutation. The statements (R., 64, 162) that he did not *sell* till after final receipt, of which so much is made by counsel, evidently refer to the deed and not the agreement. Counsel is in error in quoting this witness as say-

ing that the special agent assured him he "need not be worried any more about the indictment." What the witness actually testified was that the agent said nothing about the indictment (R., 65), though counsel attempted to put the other words in his mouth at the second examination (R., 165).

The question whether this witness's testimony should be rejected because of Wasey's death is one about which opinions of different minds might honestly differ, but surely the testimony was sufficient to cast upon the appellant the onus of doing what it could by way of contradiction. It could have called Kelly, or some other official, to explain how the money (which evidently was the company's) was paid, or at least what instructions Wasey had regarding the use of money in such cases. As this was not even attempted, we submit that there was ample justification for the finding of the two courts below concerning the entry.

*Legal effect of the evidence considered.*

There can be no serious question that all five entries were illegal for want of compliance with the statutory requirements concerning residence and cultivation.

The entries made by Hicks and Allen and Bryers were also fraudulent, in that before commutation proofs were made there was an agreement or understanding that the lands would be sold to the defendant company which furnished the money used to

pay the Government for the land. Counsel contend that an agreement made prior to the submission of commutation proof is not forbidden by the homestead laws, but discussion of this question is foreclosed by the decisions of this court in *Bailey v. Sanders* (228 U. S., 603), and *Gilson v. United States* (234 U. S., 380).

In the Hicks case not only Wasey, but Dickens, the agent who made the purchase, was clearly on notice that Hicks could not comply with the residence provision. It was actual notice. And, as the Hicks transaction was handled jointly with the Allen transaction, Hicks acting for Allen (his brother-in-law) as well as for himself, the duty to inquire concerning Allen is also evident. Both of these entries were infected by prior agreements, and it hardly lies with the appellant, which brought the entries about and procured the illegal issuance of patents in that unlawful and fraudulent way, to defend upon the ground that it did not know anything, and did not inquire, concerning the residence and cultivation.

As for the entry of Boyd (No. 154), while there is no proof of a prior agreement, there is strong evidence (Smith, R., 60; Wilson, 74) showing the sorry character of the improvements and cultivation, as well as the lack of residence, which Boyd's own testimony makes plain. If Wasey went over this land, it is fair to assume that he must have seen and noticed the evidence of want of cultiva-

tion and want of habitancy. The general proof concerning his functions warrants the belief that he did go over it, in the absence of contrary explanation coming from the appellant. The witnesses say Wasey was in that vicinity. Boyd says Wasey was on the section, though he could not say he was on the very land in controversy. (R., 171.)

Regarding the entry made by Akin and the appellant's notice through Wasey of Akin's nonresidence and of the true nature of the so-called improvements, we need not repeat what is said above in the general discussion of the evidence.

In Bryers's case there was, as we have seen, sufficient proof of a prior agreement.

In weighing all this evidence it must not be overlooked that:

### III.

**The Government having, with the requisite certainty, established that the entries were fraudulent, the onus was upon the appellant to make good its plea of bona fide purchase without notice.**

In support of this proposition it is enough to call attention to the following cases and the authorities therein cited:

*Boone v. Chiles*, 10 Pet., 177, 211.

*United States v. Brannan* (C. C. A.), 217 Fed., 849.

*United States v. Hill*, 217 Fed., 841.

It is true that the language of the opinion in the *Clark case* (200 U. S., 601) is against us here, but the point seems not to have been raised in that case, and we do not think the opinion should be taken as overruling *Boone v. Chiles, supra*. Clark not only pleaded his good faith but gave evidence to support the plea. Here the defendant made no such attempt. It did not call its officer Kelly, under whom Wasey worked, nor did it call any other witness except Moss, who passed on the abstracts of title only. It did not reveal how its moneys were used, or what the authority and functions of its agents were.

We respectfully suggest the absence of any reason why the rule announced so clearly in *Boone v. Chiles* should be abandoned in a case of this character. We concede that one who purchases on the faith of a patent, or possibly a mere register's certificate, may rely upon it and is not bound to enquire behind it, but this is no reason why it should be *assumed* that he purchased in that way. He should at least be required to prove that he relied on the patent or certificate and supplement this by a denial of any knowledge or notice of the fraud. And when, as in this case, facts tending to prove such notice are adduced by the Government, he should not be permitted, in a court of conscience, to sit mute, upon the theory that it is for the Government to prove beyond a reasonable doubt the content of his own secret knowledge.

That the burden is upon the Government to make out the fraud by strong proof is conceded. A similar burden rests upon everyone who attacks a conveyance for fraud. But the reasons for this rule do not extend to the issue of *bona fide* purchase in either case.

*Bona fide* purchasers, when truly such, are rightly the favored of equity. This ground of defense, however, is one that lends itself with peculiar facility to collusion and fraud. Only by constant insistence upon diligent inquiry may the equities of defrauded owners be protected, and only by demanding the greatest particularity of proof upon the part of purchasers may the impostors be distinguished from the worthy. It is no hardship to exact of a purchaser that he shall have been careful to follow up all clues to wrongdoing that came to his notice before he bought, and that afterwards he shall stand ready to allege and prove with fullness and particularity all that he did and all that he knew about the title. In the performance of these duties the defendant has failed most signally.

Kelly had general supervision of the appellant's Louisiana affairs from their beginning through the time when these purchases were made. He controlled Wasey and operated with him. (R., No. 151, 94-96.) Dickens also was one of his subordinates. If Kelly had been called to the stand and had testified that it was Wasey's duty to examine

into the appearance of the homestead improvements (as he actually did in at least one of these cases), and *a fortiori* if he had testified that this was actually done in these cases, no one would question the adequacy of the notice in all of them. Surely it was not incumbent on the Government to call Kelly and make him its own witness. The appellant should have called him, and, it having failed to do so, the presumption is that the testimony would have been adverse to the defense.

#### IV.

**The evidence of the unlawful prior agreements was competent.**

1. It tended to support the allegation that the company, through officers unknown to the plaintiff, aided, assisted, advised, and encouraged every illegal act charged in the bills.

2. It estopped the appellant from claiming to have purchased in good faith the lands which it agreed to purchase, fraudulently, before the final proofs.

3. The gravamen of the cause of action in each case was that the patents were fraudulently procured in violation of the homestead law. The fact that the law was violated in a way not expressly charged did not add a new cause of action. (*United States v. California and Oregon Land Co.*, 192 U. S., 355.) The bills could properly have been amended

to conform to the proof, and in the interest of justice such an amendment may be regarded as made in the appellate court.

*Jones v. Meehan*, 175 U. S., 1, 29.

*Neale v. Neales*, 9 Wall., 1.

CONCLUSION.

The decrees of the court below should be affirmed.  
Respectfully submitted.

ERNEST KNAEBEL,

*Assistant Attorney General.*

S. W. WILLIAMS,

*Attorney in Department of Justice.*

JANUARY, 1915.





FILED

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JAMES D. MAHE

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**Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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**156**

No. ~~155~~

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**WRIGHT-BLODGETT COMPANY, LIMITED,**

**(Bryers Case.)**

**versus**

**THE UNITED STATES OF AMERICA.**

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**J. BLANC MONROE,**

**MONTE M. LEMANN,**

**A. R. MITCHELL,**

**Solicitors for Defendants.**

**December, 1914.**



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# **Supreme Court of the United States**

**OCTOBER TERM, 1914.**

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**No. 166.**

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**WRIGHT-BLODGETT COMPANY, LIMITED,**

**(Bryers Case.)**

**versus**

**THE UNITED STATES OF AMERICA.**

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## **SYLLABUS.**

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.  
200 U. S., 601, *United States v. Clark*.  
200 U. S., 321, *U. S. v. Detroit Lumber Co.*

2. When the United States seeks to annul a patent on grounds of fraud in the entryman and notice in his vendee, the specific details of the fraud and of the notice must be set out in the bill, and the probata must conform to the allegata.

**121 U. S., 325, Maxwell Land Grant Case.**

**172 Fed., 950, U.S. v. Barber Lumber Co.**

**174 U. S., 981, Kennedy v. Custer.**

See other authorities page 17, *infra*.

3. It will not do for the United States to allege in its bill that the entryman was in fraud because he did not live on the land and when the case comes on for trial attempt to show that the entryman is in fraud because he sold his land before making his final proof.

4. When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which commands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.

**121 U. S., 381, Maxwell Land Grant Case.**

**123 U. S., 307, Colorado Coal Co. v. U. S., 133 U. S., 193.**

**197 U. S., 200, U. S. v. Stinson.**

5. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without

looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strong presumption arises that the entryman's vendee was likewise deceived.

6. General statements that representatives of the defendant were in the general neighborhood at the time of the purchase are not sufficient to overcome this presumption particularly so when the improvements placed upon the land were such as to create in the casual observer the belief that the law was fully complied with.

**121 U. S., 381, Maxwell Land Grant Case, etc.**

**200 U. S., 601, Clark Case.**

7. Nor will such general statements prevail when the record shows that defendants were in the habit of buying land on a general cruisers estimate without special examination and that they purchased the particular land in controversy on the advice of counsel of high standing after examination of the abstract of title thereto.

8. As U. S. R. S. 2301 does not require one commuting a homestead entry to prove that he has not agreed to alienate the land, this Court will not write such a requirement into that Statute.

**207 U. S., 455, Williamson v. U. S.**

**211 U. S., 507, U. S. v. Biggs.**

**193 U. S., 510, Adams v. Church.**

**211 U. S., 525, U. S. v. Sullenberger.**

**211 U. S., 523, U. S. v. Freeman.**

**STATEMENT.**

This is a suit by the United States Government to annul a land patent on the ground that the homestead entryman defrauded the Government, in that he did not reside upon, improve and cultivate his land, as required by the homestead laws. **THE CHARGE OF FRAUD IS STRICTLY CONFINED TO THE FAILURE TO RESIDE UPON, IMPROVE AND CULTIVATE.** (R., p. 6.) The homestead entryman, Samuel E. Bryers, is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R., pp. 5 and 9) and it is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt**. The bill then proceeds to charge that the Wright-Blodgett Company, Limited, had knowledge of the fraud in the entryman through its agents Boyd and Wasey.

The Wright-Blodgett Company, Limited, in its answer sets up that it purchased the land in good faith for value after the issuance to the entryman of his **final receipt**; that if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited**, bought and recorded its purchase, they issued the patent. It points out that the fact that the United States officials had accepted the commutation



and other proofs of Bryers and had issued a final receipt to him, was sufficient to justify it in concluding that the homestead law was complied with. This Court has in terms held that "it was not bound to look for grounds for doubt." **Clark case; Detroit Lumber Case, 200 U. S.** It stands flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman. The case was confined strictly to the issues made by the pleadings. This appears from record, page 59, where the following agreement of counsel is produced:

"It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open Court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken."

And from record, page 19, where the following objections of the Wright-Blodgett Company, Limited, appear:

"Now comes the Wright-Blodgett Company, Limited, co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

"Wherefore, it now objects to the following testimony and evidence, and moves to strike out same:

"1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be stricken out.

"2. The bills having charged that the Wright-Blodgett Company Limited, had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy, and asks that same be stricken out.

**"3. THERE IS NO ALLEGATION IN THE BILLS CHARGING INVALIDITY IN THE ENTRIES ON THE GROUND THAT THE ENTRY-MAN SOLD OR AGREED TO SELL, PRIOR TO MAKING FINAL PROOFS, HENCE ANY ATTEMPT TO SHOW SUCH A SITUATION WOULD BE IRRELEVANT AND A VARIANCE, AND IS OBJECTED TO AS SUCH, AND A MOTION MADE TO STRIKE SAME OUT.**

"4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock, is objected to as irrelevant, and motion made to strike same out.

"It appearing that there are filed herein certain letters passing between the department of the government and officials thereof and certain reports of special agents, and same are objected to by the Wright-Blodgett Company, Limited, on the ground:

"1. As not the best evidence and hearsay.

"2. As unsworn statments of persons not sworn as witnesses.

"3. *As res inter alios acta*, irrelevant and immaterial."

See, also, objections at R., pp. 61, 62, 63, 64.

The recent decisions of this tribunal leave no room for doubt as to the correctness of the appellants' contentions that the title of a purchaser in good faith, buying on the faith of a final receipt, is not affected by fraud in the entryman. These decisions are as follows:

**200 U. S., 601, United States v. Clark:**

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

"This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a *bona fide* purchaser, excepted as such from the invalidation of the patents by the act, and denied the material allegations of the bill. Voluminous evidence was taken, and at the hearing the bill was dismissed by the Circuit Court. **125 Fed. Rep., 774.** That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry (**125 Fed. Rep., 776, 777**), and con-

sidering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, **but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark.** One Judge dissented on the ground that Clark knew enough to be put upon inquiry. 138 Fed. Rep., 294. The United States then appealed to this Court.

"The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER'S RECEIPT,** but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. *Landes v. Brant*, 10 How., 348; *Bush v. Cooper*, 18 How. 82; *Myers v. Croft*, 13 Wall., 291; *United States v. Detroit Timber and Lumber Co.*, 200 U. S., 322. See, further, *Ayer v. Philadelphia and Boston Face Brick Co.*, 159 Massachusetts, 84. But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch **AS HE DID NOT PURCHASE ON THE FAITH OF THE PATENTS,** he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

**"WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals, **THAT THE ORIGINAL FRAUDS ARE MADE OUT**, although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co.**, 200 U. S., 321. The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS.** The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT.** It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a *bona fide* purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

\* \* \* \* \*

**"\* \* \*** There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He dealt as a purchaser with Cobban, and paid him the market price, and a substantial profit even on the Government's calculation. **SO FAR AS ANY INFERENCE WAS TO BE DRAWN FROM THE NEARNESS OF THE RESPECTIVE DATES OF THE RECEIVER'S RECEIPTS,**

THE DEEDS OF THE ENTRYMEN TO COBBAN AND THE DEEDS OF COBBAN TO CLARK, IT WAS AS OPEN TO THE OFFICERS OF THE GOVERNMENT AS TO CLARK, IF INDEED HE KNEW ANYTHING ABOUT THOSE DATES, YET THEY SEEM TO HAVE SUSPECTED NOTHING, AND HE WAS ADVISED BY REPUTABLE COUNSEL THAT THE TITLES WERE GOOD, AND BOUGHT ONLY ON HIS ADVICE. \* \* \* IT IS ARGUED, FURTHER, THAT CLARK'S INSPECTOR MUST HAVE GONE UPON THE LAND ABOUT THE TIME OF THE ENTRIES IN ORDER TO DO THE NECESSARY WORK OF ESTIMATING THE TIMBER. IF, FOR THE PURPOSE OF ARGUMENT, WE ASSUME THAT KNOWLEDGE OF A TIMBER INSPECTOR OF FACTS AFFECTING THE TITLE, WITH WHICH HE HAD NOTHING TO DO, WAS CHARGEABLE TO CLARK, STILL THE KNOWLEDGE IS A MERE GUESS. THERE WAS NOTHING PRESENT OR REQUIRED TO BE PRESENT ON THE FACE OF THE EARTH TO INDICATE WHEN THE ENTRY TOOK PLACE. WE CANNOT INFER FRAUD MERELY FROM MORE OR LESS FAMILIAR RELATIONS BETWEEN SOME OF CLARK'S AGENTS AND COBBAN. When suspicion is suggested it easily is entertained. But, bearing in mind, as was said in *United States v. Detroit Timber and Lumber Co.*, supra, that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF DOUBT**, and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

**200 U. S., 321, U. S. v. Detroit Lumber Co.:**

The facts in this case are stated in the opinion as follows:

"The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.

"The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a *bona fide* purchaser from the former company."

The Court held, page 329, that the entrymen were in fraud. The sole questions then left was the good faith *vel non* of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

"In their brief counsel for the Government say:  
"We claim that the law as laid down in *Haw-*

ley v. Dillon, that one who takes title before the issuance of patent, cannot claim to be a **bona fide** purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.'

"We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. **Jones v. Simpson, 116 U. S., 609, 615.** He is not bound to make a searching examination of all the account books of the vendor, nor to hunt for something to cast a suspicion upon the integrity of the title. \* \* \*

"In the light of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

"Now, what is the law controlling under these circumstances? Much reliance is placed by the



Government on **Hawley v. Diller**, 178 U. S., 476, which, affirming prior cases, holds that an entryman under the Timber Act acquires only an equity, and that a purchaser from him cannot be regarded as a **bona fide** purchaser within the meaning of the act. • • •

“• • • It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman and will in due course issue to him a patent. He is the equitable owner of the land. It becomes subject to state taxation, and under the control of State laws in respect to conveyances, inheritances, etc. **Carroll v. Safford**, 3 How., 441; **Witherspoon v. Duncan**, 4 Wall. 210; **Simmons v. Wagner**, *supra*; **Winona and St. Peter Land Co. v. Minnesota**, 159 U. S., 526; **Cornelius v. Kessel**, 128 U. S., 456; **Hastings & Dakota R. R. Co. v. Whitney**, 132 U. S., 357; **Benson Mining Co. v. Alta Mining Co.**, 145 U. S. 428.

“Indeed, in some of the opinions of this Court, emphasizing the value of a receiver's receipt, there are expressions which seems to underestimate the significance of a patent. **Wisconsin Central R. R. Co. v. Price County**, 133 U. S., 496, 510; **Deseret Salt Co. v. Tarpey**, 142 U. S., 241, 251. • • •

197 U. S., 200, **United States v. Stinson**:

“The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been

defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, **yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles** depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and it is a **good defense that the title has passed to a bona fide purchaser for value without notice.** Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. \* \* \*

"**United States v. Burlington & Missouri River R. R. Co., 98 U. S., 334, 342; Colorado Coal Co. v. United States, supra, p. 313**—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

"'But it is not such a fraud as prevents the passing of the legal title by the patents. It follows that to a bill in equity to cancel the patents upon these grounds alone **the defense of a bona fide purchaser for value without notice is perfect.**' **United States v. Marshall Mining Co., 129 U. S., 579, 589; United States v. California, Etc., Land Co., 148 U. S., 3, 41; United States v. Winoona, Etc., Railroad Co., 165 U. S., 463, 479.**"

## RESUME.

To resume, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the **Clark case** in these words:

“The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud.” “The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect**. It is recognized in the act of March 3, 1891, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.**”

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as complainant in the suit, to prove **THAT FRAUD WHICH IT HAD ALLEGED IN THE BILL AND NO OTHER FRAUD**. Any attempt to prove any other fraud would have been and was inadmissible under the pleadings and objections. So also was any attempt to prove knowledge in the Wright-Blodgett Company, Limited, through any persons other than those named. In support of these contentions we wish to direct the Court's attention to the following authorities.

**121 U. S., 325, Maxwell Land Grant Case:**

This was a suit by the United States to annul a grant of land. This Court said:

“Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside should be successful **only when the allegations on which this attempt is made are clearly stated and fully proved.** In this case the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill, and the decree of the Circuit Court dismissing it is affirmed.”

**172 Fed., 950, United States v. Barber Lumber Company:**

This was a suit by the United States to annul a patent for alleged fraud. The syllabus reads:

“In a suit of this character the bill must show specifically and in detail what the fraud consists of and how it was effected, and although the complainant may make out a case which under the circumstances would entitle it to the aid of the Court, yet if it is not the case made out in the bill it cannot recover.”

**102 U. S., 372, United States v. Atherton:**

“A bill in chancery to set aside a judgment or decree of a Court of competent jurisdiction, on the

ground of fraud, must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the Court or the party injured was misled or imposed upon.

“A bill to set aside or annul a patent of the United States for public lands or to correct it, on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred.”

**Harrison v. Nixon, 9 Peters, 503:**

“Every bill must contain in itself sufficient matters of fact, *per se*, to maintain the case of the plaintiff, so that the same may be put in issue by the answer and established by the proofs. The proofs must be according to the allegations of the parties, and if the proofs go to matters not within the allegations, the Court cannot judicially act upon them, as the ground for its decision, if the pleadings do not put them in contestation, the ‘allegata’ and the ‘probata’ must reciprocally meet and conform to each other.”

**Boone v. Childs, 10 Peters, 209:**

“A party is not allowed to state one case in a bill or answer and make out a different one by proof; the ‘allegata’ and ‘probata’ must agree; the latter must support the former.”

**Byers v. Swiget, 19 Howard, 309:**

“It is undoubtedly the rule in equity, as well as at law, that the proofs must correspond with the allegations, and that evidence irrelevant and inapplicable to the latter will be regarded as immaterial.”

**Rubber Co. v. Goodyear, 9 Wallace, 793:**

“The proposition that the patent is fatally defective because it is impossible to make merchantable goods according to the instructions contained in the specifications, cannot be entertained. The answer contains no averment upon the subject. No such issue was tendered to the complainants and they have had no notice that such a defense was intended to be relied upon.

“In equity, the proof and allegations must correspond. The examination of the case by the Court is confined to the issues made by the pleadings. Proofs without the requisite allegations are as unavailing as such allegations would be without the proofs requisite to support them.”

**United States v. Tichenor, 12 Fed., 425:**

“In the bill it is alleged that the patent was fraudulently obtained by means of false proofs, but of what the fraud consists, or wherein the proof was false, is not stated. Such an allegation is not sufficient on demurrer. The bill should have gone further and set forth the substance, at least, of the acts constituting the fraud, or stated wherein the proof was false.”

**Phelps v. Elliott, 35 Fed., 461:**

“The rule is fundamental in equity pleading that every fact essential to the complainant’s title to maintain the bill and obtain the relief, must be stated in the bill. Otherwise the defect will be fatal. In the language of the Court in **Harrison v. Nixon, 9 Pet., 483, at page 503**: ‘Every bill must contain in itself a sufficient matter of fact *per se* to maintain the case of the plaintiff. The

proofs must be according to the allegations of the parties, and if the proof go to matter not within the allegations, the Court cannot judicially act upon them as a ground for decision if the pleadings do not put them in contestation.' The 'allegata' and 'probata' must specifically meet and conform to each other, and it can no more succeed upon a case proved, but not alleged, than upon a case alleged but not proved \* \* \* a decree must be sustained by the allegations of the parties, as well as the proofs in the cause, and cannot be founded on a fact not put in issue in the pleadings."

**Platt v. Battier, 34 U. S., (9 Peters) 405:**

"Where a bill is filed to compel the conveyance of legal title to certain land, and the statute of limitations is relied upon by defendant and no disability is alleged by complainant in his bill to take the case out of the statute, the question of disability, not being put in issue by the pleadings, the Court can consider evidence tending to show such disability."

**Blandy v. Griffith, Fed. Cases, No. 10,529:**

"The rule is well settled in equity that every material fact on either side must be set up in the pleadings, and, that the Court can no more consider what is proved, but not alleged, than what is alleged, but not proved."

**Grosvenor v. Dassiell, 25 U. S. App., 227, 27 L. R. A., 67:**

"A Court of equity will not grant a decree on another ground, where the bill charges actual

fraud as the ground for relief, and the fraud is not proven.

**Eyre v. Patter, 56 U. S., 42 (15 Howard):**

“A bill in equity charging actual fraud is not maintained by evidence of constructive fraud.”

**98 U. S., 69, United States v. Throckmorton:**

This was a bill in chancery brought by the United States Government to set aside a patent for lands. Dealing with the question of notice of an alleged fraud, the Court said:

“The substance of it is that Howard, one of the present defendants, then the law agent of the Government before the board, had from the papers in some other suit, derived notice of the fraudulent character of the Micheltorena grant, and that he failed and neglected to inform the commissioners of the fact, or otherwise to defend the interest of the United States in the matter. If there had been a further allegation that Howard was then interested in the Richardson claim, or that Richardson had bribed him, or that from any corrupt motive he had betrayed the interest of the Government, the case would have come within the rule which authorizes relief; but nothing of the kind is alleged and the statement is a mere charge of carelessness or negligence on the part of the attorney for the Government, which would not have supported a motion for a new trial in a case of twenty years after it had been rendered.

“Nor is there any such clear statement of the notice which Howard had as is necessary to establish his negligence.”



Although the foregoing authorities seem to leave no doubt of its obligation so to do, complainant made no serious attempt to prove up its case as alleged in its bill, and made no serious attempt to show that either J. M. Boyd or Nat Wasey was ever on the land in dispute, or knew whether the entryman had complied with the law. Of this more infra.

Moreover, we believe that the Government failed to show any fraud in the entryman. The entry was made under the provisions of Sections 2289, 2290 and 2301 of the United States Revised Statutes, which sections read as follows:

“Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter a quarter section, or a less quantity of unappropriated public lands, to be located in a body, in conformity to the legal subdivisions of the public land; but no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory shall acquire any right under the homestead law, and every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land already so owned and occupied, exceed in the aggregate one hundred and sixty acres.”

**Section 2290, U. S. R. S.:**

“That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer, and file in the

proper land office, an affidavit that he or she is the head of a family, or is over twenty-one years of age; and that such application is honestly and in good faith made, for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation, necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation or syndicate in making such entry, nor in collusion with any persons, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter same for the purpose of speculation, but in good faith, to obtain a home for himself or herself, and that he or she has not, directly or indirectly, made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation or syndicate whatsoever, by which the title which he or she might acquire from the Government of the United States, should enure in whole or in part to the benefit of any person except himself or herself, and upon filing such affidavit with the register or receiver, on payment of \$5.00, when the entry is not more than eighty acres, and upon payment of \$10.00 when the entry is for more than 80 acres, he or she shall thereupon be permitted to enter the amount of land specified."

**Section 2301, U. S. R. S.:**

"Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of Sec. 2289 from paying the minimum price for the quantity of land so en-

tered at any time after the expiration of fourteen calendar months, from the date of such entry, and obtaining a patent therefor, **UPON MAKING PROOF OF SETTLEMENT AND OF RESIDENCE AND CULTIVATION FOR SUCH PERIOD OF FOURTEEN MONTHS**; and the provision of this section shall apply to lands on the ceded portion of the Sioux Reservation, by act approved March 2, 1889, in South Dakota and in the State of Nebraska, but shall not relieve such settlers from any payments now required by law."

(Black-letters by present writer.)

What Bryers did is thus told by him when as a witness he took the stand and testified on behalf of the complainant (p. 61):

Q. When you made that entry, did you put any improvements on this land?

A. Yes, sir.

Q. What did they consist of?

A. A plank house, twelve by twelve, and I had a little crib on it, and about an acre and a half, I reckon, of course I didn't measure that, but that was about what it was.

(Page 64):

Q. Where were you living at the time you made this entry?

A. I was living at—I was working at Mike Smith's and I would stay on my homestead. I would go up there and stay on it some; I couldn't stay on it all the time.

Q. How long did you work at Mike Smith's?

A. A little over a year.

Q. Did you work there during the whole life

of your entry, from the time you entered until the time you commuted?

A. There and at Joe White's.

Q. How far did Mr. Smith live from your land?

A. About four miles.

Q. How far was Joe White from your land?

A. Five miles.

Q. How was this house of yours furnished at the time you made your entry?

A. Why, I just taken my things up there.

Q. What things did you take?

A. My quilts, to sleep on, and stayed on the land.

Q. What other furniture, if any, was in the house, except your quilts?

A. I never had any thing else.

Q. What cooking utensils did you have?

A. None. I carried my grub with me.

Q. How often during the twenty months that you say passed between the time of your entry and the time of your commutation proof did you stay all night on that land?

A. I reckon I made an average of staying on it about one night out of the month.

(Page 66):

Q. You say you built a house up there?

A. Yes, sir.

Q. How long did it take you?

A. Why, I was up there a week building on it.

Q. What was it made out of?

A. Lumber.

Q. Where did you get the lumber?

A. From Mr. Smith.

Q. The preacher?

A. Yes, sir.

Q. Did he help you build a house?

A. No; his son did.

Q. You cultivated the land out there, didn't you?

A. Yes, sir; I made two crops on the land.

Q. What of?

A. Corn and peas.

Q. Harvested them both?

A. Yes, sir.

Q. You used to go up there and sleep in that house?

A. Yes, sir.

Q. How often?

A. About once a month. I could not stay on it all the time, of course. I was a single fellow and a single fellow has got nobody to stay with him and he don't like to stay alone.

Q. You are working for the Reverend Mike?

A. Yes, sir.

Q. And when you got through work you came back and stayed on your place?

A. When I stayed on the homestead I did.

Q. You stayed there as much as any place else?

A. Well, no, because I worked and when I worked out I couldn't go back; it was too far; I stayed there all I could, though.

Q. You were not able to make a living by working on that homestead?

A. No, sir; the land was too poor.

Q. You went back there all that was necessary to attend to your crop?

A. Yes, sir.

Q. Kept at your work right straight along?

A. Yes, sir.

Q. Didn't you have any other home except that?

A. Well, no; I didn't have any other home, of course.

Q. You considered it your home?

A. Yes, sir.

Q. When you were working out you were living up there at your house?

A. Yes, sir; I didn't have any other home, only when I moved.

Q. You would live with the Reverend Mike for a while and then go back to your homestead?

A. Yes, sir.

Q. Then you would work for White a while and then come back home?

A. Yes, sir.

Q. When you would get through work at the Reverend Mike's you would come back to your homestead and live on it?

A. Yes, sir; while I was on my homestead I worked too.

(P. 69):

Q. You say you made this entry with the idea of having a home there for yourself?

A. Yes, sir; I did; I really did.

(P. 70):

Q. Yes, you do; if you enter a piece of land with the idea of making it a home and then turn around in twenty months and sell it, you must have changed your mind.

A. Well, I did change my mind.

Q. What led you to do so?

A. Well, I didn't think I could make a living on it.

Q. What was the nature of this land?

A. It was pine land.

Q. Pine timber land?

A. Pine timber land; it was poor—too poor land.

(P. 165):

Q. Where were you living at the time you made your entry?

A. Working on my place and working on Mr. Mike Smith's. I was working with him. I was living on the place, staying there.

Q. How long did you work for Mike Smith?

A. I don't exactly know how long.

Q. About how long?

Q. Pretty well all the time I had my homestead. I worked with him off and on and worked some on my place.

This, as it appears to us, constituted compliance with the law. Bryers had no other home while complying with his entry. He at no time allowed six months to elapse without staying and residing upon his entry. He made the entry "with the idea of having a home there" for himself. He considered it his home. He erected a house upon the premises, slept upon them from time to time, and worked upon them continuously, as is shown in the foregoing testimony. It is true that he worked as a day laborer at Mike Smith's during the period of his entry, but he did this because the land he entered was too poor to sustain even his wretched existence.

The homestead law, as we read it, contemplates that the entryman may go away from his land and work out for other people. Its only prohibition is against an

abandonment exceeding six months in duration at any one time. No such abandonment can be attributed to Bryers.

The Court should bear in mind that Bryers was not only a Government witness, but was a witness whom the Government had cowed and over-awed in a most outrageous manner, before placing him upon the stand. We mention this fact because it justifies us in saying that Bryers testified as much in the Government's favor as his slow wit and the facts permitted him to do. That he was cowed and over-awed by the Government the following evidence shows:

(P. 65):

Q. You have been indicted, haven't you?

A. Indicted?

Q. Yes, sir; you have been indicted for perjury?

A. Yes, sir.

Q. By the United States Government?

A. Yes, sir.

Q. The indictment is now pending, is it not?

A. Yes, sir.

Q. You have not been tried on it?

A. No, sir.

\* \* \* \* \*

Q. Didn't you make an affidavit to Mr. Coleman?

A. Yes, sir.

Q. He told you it would be all right if you would make the affidavit?

A. Yes, sir.



Q. He told you you need not worry about that indictment for perjury if you made that affidavit?

A. He didn't say anything about it.

Q. He told you that it would be all right?

A. Yes, sir.

Q. And told you if you made that affidavit you need not be worried any more?

A. Yes, sir.

Q. That was the reason you made that affidavit?

A. Yes, sir.

Q. That is the reason you are here testifying now?

A. Yes, sir.

Even though this poor wretch was thus coerced into doing its bidding, complainant did not once ask him whether Nat Wasey knew anything about his compliance or non-compliance with the homestead law. It did not once ask him if Nat Wasey had ever been upon the land. Why? Because it did not dare to, apparently. Bryers was their witness, very much so—body and soul, almost. Bryers was in a position to know. Complainant placed him on the stand and did not ask him the question. Complainant did not place on the stand any other witness who knew, or pretended to know what knowledge Wasey had of the matter. There can be only one explanation of the failure of the complainant to interrogate Bryers on this subject, and that is complainant's fear that Bryers would testify in a manner adverse to complainant's interest.

Before going further into the notice of fraud charged to the Wright-Blodgett Company, Limited, it might not

be amiss to give a brief history of the advent of the Wright-Blodgett Company, Limited, into Louisiana, and of its method of doing business.

**NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.**

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec., pp. 95-96.) It shows that when that company first went into Louisiana it secured from one of the best available firm of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by Ben Foster, a witness **for the complainant**, who swears **as follows** (Rec., p. 94):

Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?

A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.

Q. Who are J. D. Lacey & Company?

A. Real estate man, with an office in New Orleans

Q. Do they or do they not make a business of making these timber cruises or estimates?

A. It is their principal business, or was, at that time.

Q. How do they stand in the business and how are their estimates considered by timber people?

A. Of the best.

**Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without any further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 94):**

Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?

A. **That is the usual case, the usual method of doing business.**

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no atten-

tion to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 103):

Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?

A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.

Q. (9) Do you make any statement as to the condition of the house?

A. None whatever; I do not.

Q. (10) Do you pay any particular attention to the condition of the house?

A. Not to the house, simply as to how its land is cleared.

Q. (11) You attend to your business and see how much timber there is on the forty?

A. That is my business, regardless of improvements.

Q. That is the custom observed among all timber estimators?

A. Yes.

(Page 105):

Q. (8) In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the laws so as to entitle them to a final receipt?

A. I never did.

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homestead would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the **final receipt**, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that the Wright-Blodgett Company, Limited, **followed that custom**, for Foster tells us that he never made such an investigation, and at record, page 87, it appears that he was for some years an employee of the Wright-Blodgett Company, Limited, although at the time he gave this testimony he was and for a long time had been employed by other persons.

The testimony further is that the Wright-Blodgett Company, Limited, defendants herein, made it a custom to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana,

(Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

**Wingate** testified (Tr., p. 157):

Q. You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?

A. Yes, sir; they were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.

Q. They did not purchase any lands until Pujo & Moss approved the title?

A. That was my understanding.

**Foster** testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 103):

Q. At the time you first went into the office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?

A. Yes, sir; all titles.

Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?

A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

C. D. Moss testified (Rec., p. 108):

Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?

A. Yes, sir; my recollection is that the employment began about 1899.

Q. What was the nature of that employment?

A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.

Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?

A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office, after the deeds were acquired from the different owners,

and these deeds were carried on the abstract, so that our opinions would show our opinion of the titles in the Wright-Blodgett Company; in some cases, I recall, there were two written opinions.

(Rec., p. 110):

Q. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett Company?

A. I think all but the first transaction. My recollection is that when the company first organized it purchased a very large tract of land from parties in Chicago, the Fairbanks people, and according to the best of my recollection that purchase was made before Pujo & Moss ever saw the abstract of title.

Q. In cases where the Wright-Blodgett Company would purchase direct from entrymen or Government land, would you be called upon to pass upon such title where there was no transfer nor intervening transaction?

A. That is my recollection, that the abstract would be brought in either before or after issuance of the patent; the abstract would always be brought in showing the issuance of the patent, or showing simply issuance of final receipt, and our opinion would be asked about it, and in some cases, if not in all, written opinions would be given, and then after the deed was acquired in the name of the Wright-Blodgett Company, either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards, Mr. Kelley explained to us that he wanted opinions from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner,



so that in the event of sale subsequently these written opinions could be used.

(Page 111):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 113):

Q. (30) Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?

A. No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.

(Page 93):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to the Assistant District Attorney, you explained the attitude of the Calcasieu bar prior to the coming

of the Government inspectors into Calcasieu Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 114 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified, on page 117, that his firm had actually passed upon the title here in dispute, and the written opinion of the firm approving the title is in evidence. (Rec., p. 38.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they bought it on the faith of the general estimate made by

J. D. Lacey & Company, without making any special investigation of the land. It appears, further, that the attorneys for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases**, where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the Wright-Blodgett Company's situation? They knew from the opinion of Pujo & Moss that the title was good. They knew from the estimate made by J. D. Lacey & Company exactly what timber and what property they were buying. There was no occasion for further investigation, a fact which the foregoing quotation from Wingate's testimony emphasizes, he having stated that his instructions were to send abstracts to Pujo & Moss, and if they approved the titles, the draft would be paid without further todo. It further appears that even had a special investigation been made, that investigation would have been made with a view solely to substantiating the statements made in the estimate of J. D. Lacey & Company as to the amount of timber standing on the land. And it appears further that the only information secured from such an additional investigation by the Wright-Blodgett Company, Limited, would have been a timber estimator's report, which re-

port would have contained no information on the subject of compliance **vel non** by the homesteader with the Homestead law. On this subject **Foster**, page 105, Question 8, testified as follows:

Q. In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the law so as to entitle him to a final receipt?

A. I never did.

The foregoing is particularly important in this case, for the reason that the evidence adduced by the Government itself conclusively shows that all of the outward signs of compliance with the Homestead laws were taken by Mr. Bryers, the entryman. Thus, the Government's own witnesses show that Bryers went upon the land and built upon same a good house; around this house he cultivated about an acre and a half of land and built a corn crib. His testimony is that he kept at work straight along on this land and tended his crop. (P. 67.)

His testimony has been quoted *supra*, p. 23, et seq.

With all of these improvements made and kept up on the land, it is quite evident that the ordinary timber cruiser passing over the land and observing a house, a growing crop, a corn crib, etc., would have nothing to put him on notice that the homesteader had not fully complied with the law; and this is particularly true when we bear in mind the fact that timber cruisers pay no particular attention to improvements. To this situation the following language used by this Court in the Clark case is peculiarly appropriate:

200 U. S., 601, U. S. v. Clark:

"It is argued, further, that Clark's inspector must have gone upon the land about the time of the entries, in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of the timber inspector of facts affecting the titles with which he had nothing to do was chargeable to Clark, still the knowledge is a mere guess; there is nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark's agents and Cobba."

**BRYERS' ENTRY AND FINAL PROOF WAS IN  
STRICT ACCORDANCE WITH THE FORMS  
PRESCRIBED BY LAW AND DECEIVED  
THE TRAINED GOVERNMENT EX-  
PERTS.**

Not only was all of the foregoing true, but the evidence shows that Bryers made his final proof in due form, swearing and having his witnesses swear that he had established his actual residence on the land, had cultivated two acres and had put improvements thereon. The proof was so satisfactory on its face that the Government, after issuing the final receipt to Bryers, on Sept. 18, 1901, proceeded (after presumably making further investigation, in order to ascertain that the entry was correct in all

respects), to issue a patent some nine months later, to-wit: on April 1st, 1902. This patent is the patent now assailed. **This patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded.** (Rec., p. 25.) That is to say, the Government issued the patent after being informed by the record of the sale to the Wright-Blodgett Company, Limited.

The proof was apparently so full and correct that as the bill says (Rec., p. 7):

“The said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements so falsely and fraudulently given and made by the said defendant and his said witness, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement, and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and the issuance of the United States patent therefor, by the said officers of the United States, as hereinabove set forth, and the delivering of the said patent to the defendants.”

Our natural inquiry is: If the proof was so full as to deceive the skilled experts of the United States Land

Office, whose **DUTY** it is to investigate and to hunt for grounds of doubt, why should the Court infer that it did not equally deceive the Wright-Blodgett Company, Limited, upon whom no such duty was imposed? This record gives no satisfactory answer to this inquiry. On the contrary, it appears that there was nothing in the way in which the Wright-Blodgett Company, Limited, went about making its purchase, and nothing in the way in which Samuel E. Bryers, the entryman, went about making and commuting his entry, which could or should, under normal circumstances, have placed the Wright-Blodgett Company Limited, upon notice of any alleged fraud in the entryman, Samuel E. Bryers.

But we are told by the bill that the Wright-Blodgett Co., Ltd., had this knowledge through J. M. Boyd and Nat Wasey. Let us get the dates in mind and then examine into the correctness of this assertion. The Wright-Blodgett Company, Limited, acquired this land (Rec., p. 25) on Sept. 28, 1901. The record affirmatively shows that at that time J. M. Boyd was not, and had never been in the employ of the defendant. We base this statement upon the testimony of the Government's witness, Foster. He swears, at page 86, that he was employed by the Wright-Blodgett Company, Limited, in the fall of 1901. On page 91 he swore that for several years prior to that time he had an office in Lake Charles, Louisiana, in the immediate neighborhood of the office of the Wright-Blodgett Company, Limited, and that he knew the persons in charge of the latter's office. On page 95 he swore:

Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?

A. He was never in the employ of the company, while I was with them, and I don't believe before I was with them.

J. M. Boyd may, therefore, be eliminated from the discussion. He was not an agent of the Wright-Blodgett Company, Limited, but was an agent of the United States an United States Commissioner. No knowledge of any alleged frauds in the entryman can be held to have been acquired by the Wright-Blodgett Company, Limited, through him.

As to Nat Wasey and his connection with the transaction, the record shows that at the time of the trial of this case he was dead. (R., p. 83.) There is not one single line of testimony anywhere in this record going to show that Wasey was ever on the land here in controversy, or had any knowledge of said land, beyond the information given in the estimate of J. D. Lacey & Company. On the contrary, as noted above, the Government placed the entryman on the stand and pointedly failed to ask him any question regarding Wasey. This failure raises a strong presumption that its own witness was against the Government on its claim that Wasey had any knowledge of the homesteader's compliance or non-compliance with the law. In view of that presumption and of the fact that there is, as noted above, absolutely no showing that Wasey was at any time upon the land, we submit that the complainant has failed entirely to make out the allegations of the bill and that the bill should be dismissed.



This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been emphatic and its decisions have been uniform. Some of the language used is as follows:

**121 U. S. 381, Maxwell Land Grant Case:**

“We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the

officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

**123 U. S., 307, Colorado Coal & Iron Co. v. United States:**

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained, from the Land Office, or the officers who had witnessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the Government to produce so much of this further

evidence as could be obtained, and that, in its absence, the United States had not made all the proof of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

**133 U. S., 193, U. S. v. Hancock:**

The syllabus reads:

"Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for \$1500.00, though it may be the subject of criticism, is not the **CLEAR, CONVINCING AND UNAMBIGUOUS PROOF** of fraud which is required to set aside a patent of public land."

**197 U. S., 200, United States v. Stinson:**

The syllabus reads:

"The Government, like an individual, may maintain any appropriate action to set aside its grants

and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a **bona fide** purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties."

A reading of this record will, we submit, convince this Court that there is no such clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright Blodgett Company, Limited.

### **AN ATTEMPTED VARIANCE.**

The representatives of the Government in the lower Court realized that they had not made out a case entitling them to relief, and so, at the eleventh

hour, they put that poor wretch, Bryers, on the stand, to show something that they had not averred in their bill; that is, that the Wright-Blodgett Company had contracted to purchase the land before Bryers made his final proof. To this eleventh hour defense we strenuously objected, as no allegation of the kind had been made in the bill, and under the pleadings the evidence was absolutely irrelevant. See objection and authorities quoted *supra*, this brief, page 6, and R., p. 21, No. 2, together with authorities quoted above. This objection we now insist upon, and it would seem to dispose of the attempt to annul the patent on this ground. However, for greater certainty, we will discuss Bryers and his evidence. We say Bryers and his evidence because Bryers alone gave testimony in regard to the matter and Bryers alone, Wasey being dead, was able to give testimony.

If your Honors will turn now to the report of the testimony, which was given by Bryers at Lake Charles in January, 1908, (Tr., p. 63) you will find that he then and there swore as follows, referring to certain money which he stated he had gotten from Wasey for the purpose of making his commutation proof.

Q. Were any promises made by you to Mr. Wasey in consideration for this money?

A. I don't believe there were any.

(Tr., p. 64):

Q. When did you sell it to Wasey—how long after your commutation?

A. Why, I never sold it until I got my final receipt.

He likewise swore that the United States Government had indicted him for perjury, and further stated that they had asked him to testify here and told him that if he made an affidavit in connection with this suit to annul the patent to the land he (Tr., p. 65) "Need not be worried any more about the indictment." This being the situation, he took the stand in Shreveport, La., about a year or a year and a half later, and was, indeed, a pitiable spectacle. First he swore that he had promised to sell the land before he got his receipt; then, on page 162, answer 5, he swore that he had sold **after he got his receipt**, his testimony being as follows:

Q. You don't remember that you made an agreement to sell to Wasey before you got your final receipt, or after you got it?

A. Yes, I sold it to him after I got my final receipt.

Q. You didn't sell it then until after you got your final receipt?

A. Yes. I didn't sell it till after I got my final receipt.

Q. And you never made any binding agreement with him to sell it to him until after you got your final receipt, did you?

A. Well, I don't want to mix myself up.

Q. Well, if you remember, say so, and if you don't remember, say so.

(Objected to by the Government.)

Q. Go ahead and answer, Mr. Bryers; state if you had such an agreement with Wasey before you got your final receipt.

A. I have forgot, sure.

Later on he said that he had promised to sell before he got his final receipt, his whole testimony being given with much halting and squirming and changing of color and hesitating to reply; and finally, on the last cross-examination, he turned to Mr. Mills, the Assistant United States Attorney, with a most appealing and piteous glance—the look of a dumb animal in mortal terror, and said to him:

“I didn’t cross yours, did I?”

(Tr., p. 106, Ques. 1.)

And yet, on this testimony, the testimony of a dull, childish person, in mortal terror; who contradicted himself a dozen times in the course of a half hour’s testimony, and who showed himself uncertain, weak, and pitiable in the extreme, this Court is asked to set aside a United States patent and to take away a tract of land from the defendants, for which they have paid a considerable sum of money, and upon which they have been paying taxes for a number of years. We submit that this cannot and should not be done.

It is to be borne in mind that Nat Wasey was dead and that there was no possible way to refute any statement which Bryers might make. If a patent is to be upset on his testimony, we submit that no patent will ever be safe, because after the death of the man by whom the property is actually purchased by the buyer, the entry-man can, at any time, come into Court and swear that the contract of sale was made prior to the receipt by him of his final receipt. If the witness upon whom the Government relies as its sole support in an attempt to upset

a land title, contradicts himself so many times that he becomes a pitiable spectacle, surely the testimony of that witness is not the clear, unequivocal evidence which commands respect and that amount of it which produces conviction. And this being so, the evidence adduced is not sufficient evidence under the authorities to justify the upsetting of a land patent.

Besides all this, we desire to call the Court's attention to the fact that the entry here in question was commuted under Section 2301 of the United States Revised Statutes, and to the further fact that the section in question contains no provision prohibiting the entryman from disposing of his land prior to the receipt by him of his final receipt.

It is true that United States Revised Statute 2290, provides that when the homestead entryman makes his original entry he must swear

"that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself or herself, and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation or syndicate whatsoever, by which the title which he or she might acquire from the Government should enure in whole or in part to the benefit of any person except himself or herself."

But this provision, while slightly different in phraseology, is in effect no more comprehensive than is the provision contained in the Timber and Stone Act. The latter act provides that the

"Applicant shall declare that the entry is not made for purposes of speculation, but in good



faith, and that he intends to appropriate the land to his own exclusive use and benefit and that no agreement has been made, directly or indirectly, with any person or persons whomsoever, by which the title to be acquired from the Government shall enure in whole or in part to any person except the applicant."

(The foregoing statement of what the act provides is quoted from the language of Chief Justice White in the **Williamson case, 207 U. S.**)

In one case the statute provides that the entryman must swear that he does not apply to enter the land for the purpose of speculation, but in good faith, to obtain a home for himself, and that he has not directly or indirectly, made, and will not make, any agreement or contract in any way or manner by which the title which he or she might acquire from the Government should enure in whole or in part to the benefit of any person except himself; and, in the other case, the statute provides that the applicant shall declare that the entry is not made for purposes of speculation, but in good faith, and that he intends to appropriate the land **to his own exclusive use and benefit**, and that no agreement has been made, directly or indirectly, with any person or persons whomsoever, by which the title to be acquired from the Government shall enure in whole or in part to any person except the applicant.

There would seem to be the narrowest possible difference of meaning between the two statutes, and yet this Court has held, in the *Williamson case*, that the latter suit did not preclude the entryman from agreeing to

sell his land before he received his final receipt. The reasoning of Chief Justice White, upon which the Williamson decision is founded, is lucid and cogent. We can add nothing to it, hence reproduce it as our strongest brief.

**Williamson v. United States, 207 U. S., 455:**

“To do so it becomes necessary to determine whether the Statute requires an applicant after he has made his preliminary sworn statement concerning the **bona fides** of his application, and the absence of any contract or agreement in respect to the title, to additionally swear to such facts after notice of his application has been published, and the time has arrived for final action on the application. And this, of course, involves deciding whether the regulation of the commissioner exacting such additional statement at the time of final hearing is valid. The inquiry concerns only the second and third sections of the act. Turning to the second section, it will be seen that it requires the applicant to make a sworn statement giving many particulars concerning the land, its usefulness for cultivation, its being uninhabited, the absence of mineral, etc., followed by the requirement that **THE APPLICANT SHALL DECLARE THAT THE ENTRY IS NOT MADE FOR PURPOSES OF SPECULATION, BUT IN GOOD FAITH, AND THAT HE INTENDS TO APPROPRIATE THE LAND TO HIS OWN EXCLUSIVE USE AND BENEFIT, AND THAT NO AGREEMENT HAS BEEN MADE, DIRECTLY OR INDIRECTLY,** with any person or persons whatsoever by which the title to be acquired from the Government shall enure in whole or in part to any person except the applicant. And the

section concludes by causing any false statement made in the application to constitute the crime of perjury.

“Examining the third section it will be seen that it provides that upon filing said statement as provided in the second section, it shall be the duty of the local land officer to post a notice of the application in his office, for sixty days, furnish the applicant with a copy of such notice for publication at the expense of the applicant, in the nearest newspaper, for sixty days, and when such period has expired, on proof of the publication and of certain facts which the statute expressly enumerates, the applicant shall, upon payment of the requisite charge, in the absence of a contest, be entitled to a patent for the land. Examining the items which the statute requires the applicant to make proof of after showing publication, it is apparent that while some of the things referred to in the prior section, and which are required to be stated in the preliminary proof are reiterated, **ALL EQUIREMENT IS OMITTED OF ANY STATEMENT REGARDING A SPECULATIVE PURPOSE ON THE PART OF THE APPLICANT, HIS BONA FIDES AND HIS INTENTION TO ACQUIRE FOR HIMSELF ALONE.** When the context of the Statute is thus brought to view, we are of the opinion that it cannot possibly be held without making by judicial legislation a new law, that the statute exacts from the applicant a reiteration at the final hearing of the declaration concerning his purpose in acquiring title to the land, since to do so would be to construe the statute as including in the final hearing that which the very terms of

the statute manifest were intended to be excluded therefrom. We say this because, as a third section re-enacts in the final application a reiteration of some of the requirements concerning the character of the land, made necessary in the first application, and omits the requirements as to the *bona fides*, etc., of the applicant, it follows under the elementary rule that the inclusion of one is the exclusion of the other; that the re-enacting of a portion only of the requirement was equivalent to an express declaration by Congress that the remaining requirement should not be exacted at the final proof.

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“Indeed, we cannot perceive how, under the statute, if an applicant has in good faith complied with the requirements of the second section of the act, and pending the publication of notice has contracted to convey, after patent his rights in the land, his doing so could operate to forfeit his right. These conclusions are directly sustained by a recent ruling in **Adams v. Church**, 193 U. S., 510, construing the Timber Culture Act. Under that law an applicant for entry was obliged, among other things, in making his application, to swear to his good faith and to the absence of speculative purpose, in the exact words of the statute now under consideration. But in the Timber Culture Act, as in the Timber and Stone Act, the requirement was not reimposed in respect to final proof. In the cited case the entryman who had complied with the statute in making his application had between the date of the application and the making of final proof, disposed of his right, and the question was whether by so doing he had forfeited his

claim. In deciding adversely to the contention that he had, the Court said, on page 515:

**“ ‘BUT THE LAW DOES NOT REQUIRE AFFIDAVIT BEFORE FINAL CERTIFICATE THAT NO INTEREST IN THE LAND HAS BEEN SOLD,** we perceive no reason why such contract as was found to exist by the Supreme Court of Oregon would viatiate the agreement to convey after the certificate is granted and the patent issued. If the entryman has complied with the statute, and made the entry in good faith, in accordance with the terms of the law and the oath required of him upon making such entry, and has done nothing inconsistent with the terms of the law, we find nothing in the fact that during his term of occupancy he has agreed to convey an interest to be conveyed after patent issued, which will defeat his claim and forfeit the right acquired by planting trees and complying with the terms of the law. Had Congress intended such results to follow from the alienation of an interest after entry in good faith, it would have so declared in the law.’ ”

**37 Fed., 666, United States v. Howard:**

“Perjury cannot be predicated on an oath to immaterial and irrelevant statements, no matter how false such statements may be. Thus, where a homestead entryman on his application for commutation of his homestead under this section makes the affidavit required of an original applicant for homestead entry, but not required of an applicant for the commutation of such entry, the oath as to immaterial and irrelevant matter and cannot support a conviction for perjury.”

In the course of the opinion the Court said:

"If the homestead settler does not wish to remain five years on the land, the law permits him to pay for it with cash, and to obtain a patent therefor from the Government. In other words, he may abandon his rights under the homestead law and avail himself of the benefits of the law granting preemption rights. See **Secs. 2301 and 2259 R. S.** When this is done it is called a commuted homestead entry."

**72 Fed., 601.** The Court said:

"There is a wide distinction between the cancellation by the Land Department of a homestead entry and a refusal by the same authority of an application by the settler for patent before the expiration of the homestead limit of five years."

**211 U. S., 507, United States v. Biggs:**

"The timber and Stone Act, as amended, while prohibiting the entryman from entering ostensibly for himself, but in reality for another, does not prohibit him from selling his claim to another after application and before final action. **Williamson v. United States, 207 U. S., 425.**"

(The Court discusses the **Williamson case**, and affirms it in full.)

See, also **United States v. Sullenberger, 211 U. S., 523; United States v. Freeman, 211 U. S., 525; Adams v. Church, 193 U. S., 510**, to the same effect.

We are aware that the Government will contend that the **Williamson** and **Adams** cases were virtually overruled

in the **Bailey-Sanders case, 228 U. S., 603**, but we cannot agree with that contention. In the Bailey case **no patent ever issued**. There the entry was disallowed by the Land Department before a patent issued and the Court was asked to upset the actions of the Land Department. It declined to do so. Here the Land Department acted favorably on the entry and issued patent. We believe the Court will again decline to upset its findings. Besides this, even if the case were incapable of differentiation, we believe that the doctrine enunciated by Chief Justice White in the Williamson case and affirmed in the Biggs case is the correct interpretation of the Statute, and should prevail.

It must not be forgotten that a patent is the highest form of evidence as against the Government, and that this Court has repeatedly held that it will not annul a patent unless the evidence is absolutely conclusive and makes the annulment thereof imperative. We submit that no such case is here presented. It is not only not shown that the Wright-Blodgett Company was in bad faith in purchasing this land, but the Wright-Blodgett Company has succeeded in showing that it was in good faith in doing so. The testimony is that they had a large timber estimate of the entire tract, and that it was the custom of timber purchasers to buy on the faith of such estimates. There is no testimony to show that any special investigation of this particular tract was made, and there is affirmative testimony to show that before making the purchase the titles to the land were tendered by the Wright-Blodgett Company to Messrs. Pujo & Moss, one of the best known law firms in

the State of Louisiana, and that that firm advised them that in all cases where final receipt had issued, they were perfectly safe in accepting the title without further investigation.

Under the circumstances, we submit that the good faith of the Wright-Blodgett Company is beyond question, and that against it the suit to annul the patent must be dismissed. We ask for judgment accordingly.

**J. BLANC MONROE,**

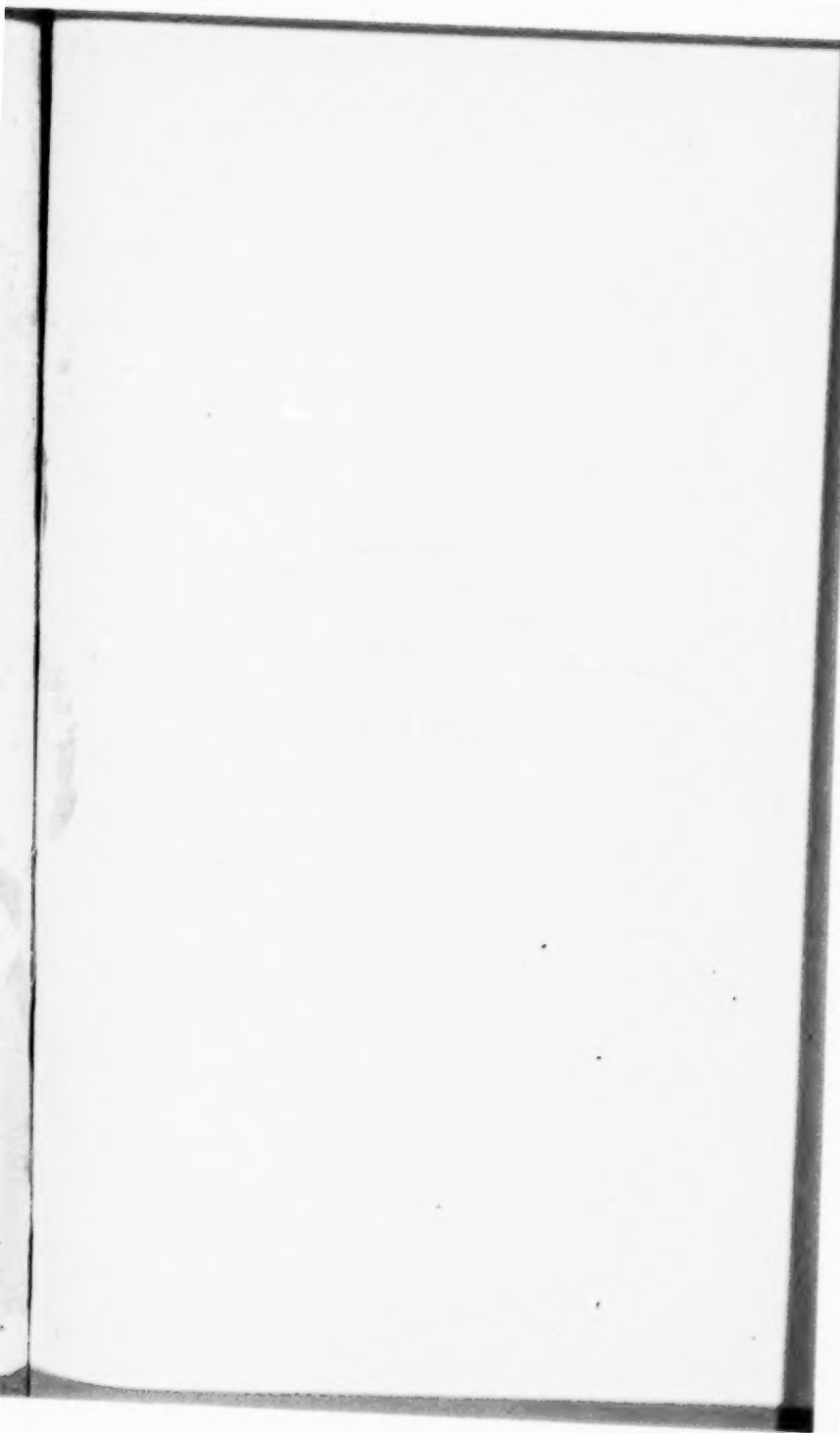
**MONTE M. LEMANN,**

**A. R. MITCHELL,**

**Solicitors for Defendants.**

**December, 1914.**





WRIGHT-BLODGETT COMPANY *v.* UNITED STATES.

SAME *v.* SAME.

SAME *v.* SAME.

SAME *v.* SAME.

SAME *v.* SAME.

APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Nos. 151, 152, 154, 155, 156. Argued January 26, 27, 1915.—Decided February 23, 1915.

Although several cases cancelling patents for fraud have been decided by the District Court without opinion, if the same decree was entered in all the cases and all were alike in their main features, although varying in details, and the Circuit Court of Appeals affirmed all the decrees with an opinion stating that fraud in the entry was proved and that the grantee was charged with knowledge, the two courts must be deemed to have concurred in their findings; and the rule that under such conditions their determinations upon questions of fact, in absence of clear error will not be disturbed, applies.

While a patent obtained by fraud is not void or subject to collateral attack, it may be directly assailed by the Government in a suit against the patentee or grantee, and such a suit can only be sustained by proof producing conviction.

Despite satisfactory proof of fraud in obtaining the patent, if the legal title has passed, *bona fide* purchase for value is a perfect defense; but it is an affirmative one which the grantee must establish in order to defeat the Government's right to cancel a patent which fraud alone is shown to have induced. *Boone v. Chiles*, 10 Pet. 177.

203 Fed. Rep. 263, affirmed.

THE facts, which involve the validity of certain land patents issued under the homestead laws of the United States, are stated in the opinion.

*Mr. J. Blanc Monroe*, with whom *Mr. Monte M. Lemann* and *Mr. A. R. Mitchell* were on the brief, for appellant:

When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee. *United States v. Clark*, 200 U. S. 601; *United States v. Detroit Lumber Co.*, 200 U. S. 321.

When the United States seeks to annul a patent on grounds of fraud in the entryman and notice in his vendee, the specific details of the fraud and of the notice must be set out in the bill, and the probata must conform to the allegata. *Maxwell Land Grant Case*, 121 U. S. 325; *United States v. Barber Lumber Co.*, 172 Fed. Rep. 950; *United States v. Atherton*, 102 U. S. 372; *Harrison v. Nixon*, 9 Pet. 503.

It will not do for the United States to allege notice in one way and through named individuals, and to attempt to prove notice in another way and through other individuals. See cases *supra*.

When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which commands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt. *Maxwell Land Grant Case*, 121 U. S. 381; *Colorado Coal Co. v. United States*, 123 U. S. 307; 133 U. S. 193; *United States v. Stinson*, 197 U. S. 200.

The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The

urchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained agents of the Government land department, and that they issued both final receipt and patent, a strong *de facto* presumption arises that the entryman's vendee was likewise deceived.

General statements that representatives of the defendant were in the general neighborhood at the time of the purchase are not sufficient to overcome this presumption particularly so when the improvements placed upon the land were such as to create in the casual observer the belief that the law was fully complied with. *Maxwell Land Grant Case*, 121 U. S. 381; *Clark Case*, 200 U. S. 601.

Nor will such general statements prevail when the record shows that defendants were in the habit of buying land on a general cruiser's estimate without special examination and that they purchased the particular land in controversy on the advice of counsel of high standing after examination of the abstract of title thereto.

As Rev. Stat., § 2301 does not require a commuter to prove that he has not agreed to sell his land before receiving his final receipt, this court will not write such a provision into that statute. *Williamson v. United States*, 7 U. S. 455; *United States v. Biggs*, 211 U. S. 507; *Adams Church*, 193 U. S. 510; *United States v. Sullenberger*, 211 U. S. 525; *United States v. Freeman*, 211 U. S. 523.

When the United States, while attempting to discharge its obligation to show actual notice on the part of the defendant of the fraud in the entryman places the entryman on the stand and the latter swears that he took an agent of the defendant to the land, pointed out to him the improvements which he, the entryman, had placed upon the land and "assured" said agent that everything which the

law required had been done, the United States not only fails to prove notice in the defendant but affirmatively establishes defendant's good faith and absence of notice.

*Mr. Assistant Attorney General Knaebel, with whom Mr. S. W. Williams was on the brief, for the United States:*

The two lower courts having concurred in finding that the testimony respecting cultivation, residence, and improvements was false, and that the appellant had notice through its agents on the ground at the time of its purchase, the finding should not be disturbed unless clearly erroneous.

There is evidence to support the findings.

The Government having, with the requisite certainty, established that the entries were fraudulent, the *onus* was upon the appellant to make good its plea of *bona fide* purchase without notice.

The evidence of the unlawful prior agreements was competent.

In support of these contentions, see *Bailey v. Sanders*, 228 U. S. 603; *Boone v. Chiles*, 10 Pet. 177; *Gilson v. United States*, 234 U. S. 380; *Jones v. Meehan*, 175 U. S. 1; *Neale v. Neales*, 9 Wall. 1; *Texas & Pac. Ry. v. R. R. Com. of La.*, 232 U. S. 338; *United States v. Brannan*, 217 Fed. Rep. 849; *United States v. Cal. & Oreg. Land Co.*, 192 U. S. 355; *United States v. Clark*, 200 U. S. 601; *United States v. Hill*, 217 Fed. Rep. 841.

MR. JUSTICE HUGHES delivered the opinion of the court.

These five cases, although involving separate transactions, may conveniently be considered in a single opinion. The suits were brought by the United States to annul certain land patents <sup>1</sup> issued under the homestead laws upon

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<sup>1</sup> In No. 151 the entry was made October 19, 1898, by Joe J. Hicks; commutation proof was offered June 11, 1901, and final certificate is-

the ground that the respective entrymen had defrauded the Government in securing the patents in that they had not actually resided upon the land and cultivated it as required by the statute, the statements in their proofs on commutation being false. Rev. Stat., § 2301. It was further averred that the Wright-Blodgett Company, the appellant, at the time of its purchase of the respective tracts had notice through its agents of the fraud which had been perpetrated by the entrymen. The appellant answered in each case, disclaiming all knowledge of the alleged fraud and setting up that it was a *bona fide* purchaser for value after the issuance to the entrymen of the final receipts. The cases were separately heard and in each, upon pleadings and proofs, a decree was entered canceling the patent. Upon appeal, the Circuit Court of Appeals affirmed the decrees. The opinion of that court stated that it found 'that fraud in the homestead entry' was proved, and that the appellant was 'charged through its active agents on the ground with knowledge of the fraud.'

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On July 6, 1901; on July 10, 1901, the entryman sold the land to the appellant. Patent was issued April 1, 1902.

In No. 152 the entry was made April 10, 1899, by Walter O. Allen; commutation proof was offered June 11, 1901, and final certificate issued July 8, 1901; on July 10, 1901, the entryman sold the land to the appellant. Patent was issued July 5, 1902.

In No. 154 the entry was made January 13, 1900, by Elijah Z. Boyd; commutation proof was offered May 18, 1901, and final certificate issued May 24, 1901; on June 21, 1901, the entryman sold the land to the appellant. Patent was issued February 15, 1902.

In No. 155 the entry was made May 4, 1899, by Samuel S. Akin, Jr.; commutation proof was offered August 17, 1901, and final certificate issued September 18, 1901; on September 28, 1901, the entryman sold the land to the appellant. Patent was issued April 1, 1902.

In No. 156 the entry was made January 31, 1900, by Samuel E. Myers; commutation proof was offered August 17, 1901, and final certificate issued September 18, 1901; on September 28, 1901, the entryman sold the land to the appellant. Patent was issued April 1, 1902.

The appellant urges that it does not appear that the two courts concurred in their findings as the cases were decided in the District Court without opinion and, in three of the cases, there was testimony which, according to the Government, tended to show that the transactions were fraudulent not only because there had not been the residence and cultivation required by the statute and stated in the proofs, but also because of agreements prior to the commutation proofs to sell the lands to the appellant. But the District Court rendered its decree in the five cases on the same day; in two of these, it is not suggested that there was evidence of such anticipatory agreements, but the same decree was entered and must have proceeded on the evidence as to the lack of residence and cultivation. While the facts in the several cases vary in details they are so far alike in their main features with respect to residence and cultivation as to make it absolutely impossible to assume that any different conclusion of fact was reached by the District Court in the three cases than that at which it arrived in the two others. The two courts must be deemed to have concurred in their findings and in accordance with the well-settled rule their determination upon mere questions of fact will not be disturbed, unless clear error is shown. *Stuart v. Hayden*, 169 U. S. 1, 14; *Towson v. Moore*, 173 U. S. 17, 24; *Texas & Pacific Ry. v. Railroad Commission*, 232 U. S. 338, 339; *Washington Securities Co. v. United States*, 234 U. S. 76, 78; *Gilson v. United States*, 234 U. S. 380, 384. An examination of the record fails to disclose any such error in the finding as to the fraud of the entrymen, and it is not necessary to recite the evidence.

It is insisted, however, that in the finding as to the standing of the appellant there was involved an erroneous application of the law. In substance, the argument comes to this,—that in a suit by the United States to cancel a patent upon the ground of fraud, where the land is held

By a grantee of the entryman, the Government must establish that the grantee is not a *bona fide* purchaser for value; that this must be shown by proof of a clear and honest character; and that, measured by this standard, the Government's case was not made out. This contention proceeds upon an erroneous view of the governing principles as repeatedly set forth in the decisions of this court. These principles may be briefly restated: Where a patent is obtained by false and fraudulent proofs submitted for the purpose of deceiving the officers of the Government, and of thus obtaining public lands without compliance with the requirements of the law, while the patent is not void or subject to collateral attack, it may be directly assailed in a suit by the Government against the parties claiming under it. In such case, the respect due to a patent, the presumption that all the preceding steps required by the law had been observed before its issue, and the immense importance of stability of titles dependent upon these instruments, demand that suit to cancel them should be sustained only by proof which produces conviction. *United States v. Minor*, 114 U. S. 233, 239; *Maxwell and-Grant Case*, 121 U. S. 325, 381; *United States v. Stinson*, 197 U. S. 200, 204, 205; *Diamond Coal Co. v. United States*, 233 U. S. 236, 239. And, despite satisfactory proof of fraud in obtaining the patent, as the legal title has passed, *bona fide* purchase for value is a perfect defense. *Colorado Coal Co. v. United States*, 123 U. S. 307, 313; *United States v. Stinson*, *supra*; *Diamond Coal Co. v. United States*, *supra*; *United States v. Detroit Lumber Co.*, 200 U. S. 321; *United States v. Clark*, 200 U. S. 601. But this is an affirmative defense which the grantee must establish in order to defeat the Government's right to the cancellation of the conveyance which fraud alone is shown to have induced. The rule as to this defense is thus stated in *Boone v. Chiles*, 10 Pet. 177, 211, 212: "In setting it up by plea or answer, it must state the deed of purchase, the



date, parties, and contents briefly; that the vendor was seized in fee, and in possession; the consideration must be stated, with a distinct averment that it was *bona fide* and truly paid, independently of the recital in the deed. Notice must be denied previous to, and down to the time of paying the money, and the delivery of the deed; and if notice is specially charged, the denial must be of all circumstances referred to, from which notice can be inferred; and the answer or plea show how the grantor acquired title. . . . The title purchased must be apparently perfect, good at law, a vested estate in fee-simple. . . . It must be by a regular conveyance; for the purchaser of an equitable title holds it subject to the equities upon it in the hands of the vendor, and has no better standing in a court of equity. . . . Such is the case which must be stated to give a defendant the benefit of an answer or plea of an innocent purchase without notice; the case stated must be made out, evidence will not be permitted to be given of any other matter not set out." See also *Smith v. Orton*, 131 U. S., appendix, lxxv, lxxviii; *Colorado Coal Co. v. United States*, *supra*; *United States v. California &c. Land Co.*, 148 U. S. 31, 41, 42; *United States v. Stinson*, *supra*; *Story's Eq. Pl.*, §§ 805, 805a, 806; 2 *Pomeroy*, *Eq. Jur.*, §§ 745, 784; *Jewett v. Palmer*, 7 Johns. Ch. 65, 68; *Seymour v. McKinstry*, 106 N. Y. 230; *Graves v. Coutant*, 31 N. J. Eq. 763; *Sillyman v. King*, 36 Iowa, 207; *Prickett v. Muck*, 74 Wisconsin, 199; *Bank v. Ellis*, 30 Minnesota, 270; *Lewis v. Lindley*, 19 Montana, 422. In *United States v. Detroit Lumber Co.*, *supra*, the Circuit Court of Appeals found that the Detroit Company was a purchaser in good faith and this court reviewing the facts reached the same result. The Company had no knowledge or intimation of wrong until long after the issuance of the patents. In *United States v. Clark*, *supra*, both courts below had found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put

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him upon inquiry. Clark, his agents and advisers, testified that they did not know or suspect anything wrong. (200 U. S., p. 608.) The defense of *bona fide* purchaser for value was completely made out and what is said in the opinion must be read in the light of that fact. Nothing was shown to impair the case which the defendant had established; and there was no intention to depart from the well-settled rule to which we have referred.

In the present case the appellant had its agents upon the ground and it has been found that through these agents it had knowledge of the fraud. The contention that as the Government had alleged notice through particular agents it could not be shown that the Company had acquired knowledge through other agents than those named is without merit; the allegation in the bill as to the particular agents was surplusage. Upon the question of fact, with respect to *bona fides* in its purchase, both courts below have found against the appellant and the record does not show any error requiring the reversal of the decrees.

*Decrees affirmed.*

MR. JUSTICE McREYNOLDS took no part in the consideration and decision of this case.